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## **WORKMEN'S COMPENSATION**

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# WORKMEN'S COMPENSATION

BY

SIR ARNOLD WILSON, M.P.

AND

PROFESSOR HERMANN LEVY

VOL. I. SOCIAL AND POLITICAL DEVELOPMENT

VOL. II. THE NEED FOR REFORM

VOLUME I

SOCIAL AND POLITICAL DEVELOPMENT

*'State intervention is no longer superstitiously tabooed; and though the class legislation of the future will be working-class legislation, there is no reason for pronouncing any particular exercise of authority to be a piece of class legislation merely because it conduces specially to the benefit of the working class.'*

John Rae, CONTEMPORARY SOCIALISM. 1884. Introduction.



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## PREFACE

By SIR ARNOLD WILSON, M.P.

WORKMEN'S Compensation represents the statutory right of a workman to claim a measure of compensation for injuries received in his employment (and of his dependants to claim compensation in the event of his death by an industrial accident). Its importance may be gathered from the fact that, of 7,606,066 persons employed in 1936 in Shipping, Factories, Docks, Mines, Quarries, Constructional Work, and Railways, there were 2,286 deaths and 459,271 cases of non-fatal injury lasting over three days in respect of which compensation was paid.<sup>1</sup> Fifteen died and 19,339 were disabled by industrial diseases. In 383,605 cases of accident the first weekly payment was made during the year: the relevant figure for industrial diseases was 11,640. Yet these figures cover only half of the fifteen million or more persons who come within the scope of the Workmen's Compensation Acts: they exclude, for example, the building industry, agriculture, and road transport. If all accidents covered by the Acts were statistically recorded the totals would be far higher. Such accidents have tended to increase absolutely and relatively. Fatal cases per 1,000 persons employed have risen from 0.3 in 1922 to 0.4 in 1935. Non-fatal cases have risen from 53.3 in 1922 to 57.8 in 1935.<sup>2</sup> Against their liability in all these cases most, but not all, employers are insured.

In this, the first of two volumes dealing comprehensively with the whole question of Workmen's Compensation from the sociological point of view, we have endeavoured to trace the development of this form of social protective legislation from its earliest historical beginnings, and to set forth, in some detail, the successive steps hesitatingly taken by Parliament to protect workmen from the worst effects of industrial injuries and diseases, the rapid growth of which was one of the consequences of the increasing use of power in factories, workshops, and mines. Though measures of accident prevention and of compensation for injuries have been steadily developed during the last sixty years, and though the proportion of fatal and incapacitating injuries is somewhat less than formerly, every new machine and most new processes seem, on balance, to create fresh risks, for effective measures of safety can seldom be devised in anticipation of a theoretical danger, and it is

<sup>1</sup> As against 2,500 killed and 380,000 injured in 1922. We may here compare these figures with the average number of persons killed and injured annually on the roads of Britain in the years 1928-37, viz. 6,800 and 205,000.

<sup>2</sup> *Abstract of Labour Statistics*, 1936, p. 192.

exceedingly difficult to induce workmen to take adequate precautions against risks to which by constant exposure they soon become inured.

The Common Law, in England as elsewhere, has always given a measure of protection to workmen against the negligence or other torts of employers, but it proved unequal to the new conditions created by the industrial revolution. The measure of protection which it once afforded was narrowed a century ago by judicial decisions which put into the hands of employers a powerful weapon—the defence of 'common employment'. The injustices which sprang therefrom led, after a lapse of over sixty years, to the demand, headed by Lord Shaftesbury and other Tories in the House of Lords, for the first tentative measures for the protection of and for compensation to workmen which emerged as the Employers' Liability Act of 1880.

Much was done between 1840 and 1880, in face of the indifference or hostility of politicians such as John Bright,<sup>1</sup> to regulate hours of labour and age of entry into industry, to make industrial processes less perilous to those engaged therein. In this matter Britain lagged behind continental countries, and such legislation as successive Parliaments could be induced tardily to pass did not suffice to abate the steady deterioration of the health of our industrial population, whose apathy, which the Churches seldom tried to combat, was, indeed, as marked as that of their employers. The Liberal creed of 'freedom of contract' between parties so unequally matched as master and man was for long successfully invoked against the paternal authority of the executive government, a principle which had never quite been ousted in Europe by the modern forms of *laissez-faire*, *laissez-aller*, which the 'physiocratic' authors of that political battle-cry would certainly have disowned.

It was in coal-mining that modern accidents, varying from isolated fatal accidents to catastrophic disasters, first began to develop, but factories levied an even larger cumulative toll of death and injury from accident and often unnoticed and unsuspected disease. The enforcement in successive decades of increasingly stringent regulations under the Factory Acts showed that accidents, particularly to juveniles, could be somewhat reduced by taking thought, but statistics collected officially over a period of years also made it clear that industrial accidents could no longer be regarded as an aggregate of chance mishaps to unfortunate or careless individuals. The toll of road accidents and industrial injuries, varying roughly with the numbers exposed to given risks, suggests that there is a limit to the efficacy of educational methods, whether in childhood, adolescence, or maturity, for *parit contemptum nimia familiaritas*.<sup>2</sup> Human faculties have not been and

<sup>1</sup> Sir C. Trevelyan, *Life of John Bright*, 1913, Chap. V, pp. 154 sqq.

<sup>2</sup> L. Publius Syrus, 102.

perhaps cannot be fully adapted to the speed of the machine and to the perils of industry. The legislature must take note of the fact.

The annual percentages of accidents in factories and their incidence from decade to decade in the mining industry were remarkably constant. The incidence of industrial disease was unrecorded, but the annual returns of the Registrar-General show that, between 1810 and 1860, the urban industrial population was, by any test that could be applied, deteriorating in health, in working capacity, and in expectation of life.

This state of affairs was a concomitant of industrial development in most European countries and in America, but it attracted less attention here than elsewhere. Yet Britain, the pioneer of modern industry, was more closely affected than any other nation for, from the beginning of the nineteenth century to the present day, a far larger proportion of her inhabitants were engaged in or dependent on industry than that of any other country. But Britain was already a great colonial power and the eyes of her rulers and her forces were fixed upon the most distant parts of the earth. The speeches of Burke and Brougham, of Pitt and of Palmerston, of Gladstone and of Bright<sup>1</sup> show little realization of the desperately miserable conditions under which great numbers of their own people lived and worked in factories and mines. The Reports of the Royal Commission on the Employment of Children in Factories and Mines (1842), of Select Committees on Industrial and other Schools in Ireland and the United Kingdom, on the Poor Law, and on Lunatic Asylums between 1830 and 1850 would have furnished authentic material of indisputable authority for a narrative far more poignant than Harriet Beecher Stowe's *Uncle Tom's Cabin*—first published in 1852 and later translated into twenty-three languages. Not less dreadful is the evidence submitted to the Select Committee on the Protection of Infant Life, 1871.

No writer or poet arose to tell of these things: the spectre of Republicanism and Communism across the Channel and Chartism at home served to discourage rather than stimulate social reform. In 1832, when vast numbers of children under 10 were employed in mines and hundreds of thousands under 14 worked 12 hours or more a day in factories, Wordsworth wrote<sup>2</sup>

This People, once so happy, so renowned  
For Liberty, would seek from God defence  
Against far heavier ill, the pestilence  
Of revolution, impiously unbound!

<sup>1</sup> On the pedestal of his statue outside the Town Hall at Rochdale is inscribed a sentence from one of his speeches: 'I speak for those who cannot speak for themselves.' Yet no leading statesman of his day was less active in furthering limitation of hours in factories.

<sup>2</sup> *Sonnets dedicated to Liberty and Order.*

The Reform Bill brought forth a reference to

All Powers and Places that abhor the light  
Joined in the transport, echoing back their shout  
Hurrah for—, hugging his Ballot-box.

A few men like Lord Shaftesbury and Sir Edwin Chadwick and Tremenheere, one of the first Inspectors of Mines, were alive to the truth. Their voices were long unheeded. Disraeli realized the need for action and by his novels, not less than by his Parliamentary activities, did much to arouse the nation's conscience to the devastating social effects of the industrial revolution. But industrial capitalism had shaken itself free of the surviving elements of paternalism in government and the ballot-box was in the hands of industrialists and shopkeepers. Few Civil Servants had any acquaintance with factories or mines, or with working-class conditions. Thus it was that countries such as Germany, Belgium, and France, which entered the industrial field far later, were the first to take steps to mitigate, if they could not prevent, the worst evils of factory life. It was to these countries that Lord Shaftesbury and Joseph Chamberlain went for ideas and for inspiration in regard to Workmen's Compensation, but Chamberlain, the Radical with Republican leanings, found little support on either side of the House for any measure of compulsory and therefore of State insurance, though, a few years earlier, a Royal Commission, of which Sir S. Northcote was Chairman and Sir M. Hicks-Beach a member, had urged that 'the whole ground now occupied by what is termed industrial assurance' should be covered by a State scheme.<sup>1</sup> A few members of the Upper House took the view that insurance against death or disablement consequent upon an injury arising out of or received in the course of employment was an even more necessary form of industrial assurance, and one for which the State might properly assume managerial responsibility, but such was not the view held by the Commons.

The system of *Knappschaften* in the mining industry, an organization related in some respects to the gild system, was still to be found in Europe, but gilds had long disappeared from England. In Germany the unforgotten traditions of the gild system gave birth to the *Berufsgenossenschaften*. In England Trade Unions carried weight, and some were well organized, but the movement was not strong enough, financially or politically, to forestall or prevent the commercialization of social insurance services and was, on the whole, suspicious of State

<sup>1</sup> The term 'industrial assurance', then as now, was a euphemism for insurance against death, whether own life or life of another, for small sums, ostensibly to cover funeral expenses, the premiums for which are collected at weekly or monthly intervals.

intervention. The commercial ideals of the Manchester school had struck their roots deep and were responsible for the assumption, as a principle or axiom of social life, that the risk of accident and injury, whether fatal or not, and whether involving total or partial disablement, was not one which should fall wholly or even principally upon the employer.

In the first half of the nineteenth century this attitude of mind found expression in the legal concept of a 'contract of labour', the acceptance of wages by a workman being held to imply acceptance of responsibility for the normal risks of his employment. Even to-day it is widely held that at least a part of the risk should be borne by the worker; nor is this view, either in theory or practice, unreasonable, and if wages were proportionate to known and accepted risks it would be difficult to refute. Subject to this limitation *volenti non fit injuria* is a sound maxim, but it was long held to debar workmen from compensation, except in the case of gross negligence of the employer or his agent, and even here the defence of common employment was invoked yet further to narrow the scope of legal remedy.

Legal decisions during the greater part of the nineteenth century were profoundly influenced by liberal ideas; in the words of Lord Davey, himself a great judge, 'all His Majesty's Judges are impartial, but not all have been able to clear their minds of prejudice'. Judges were inevitably affected by the social and economic creed of the society in which they lived—and construed legislation accordingly.

A judge [said the late Lord Justice Scruton] may share the traditions, education, and outlook of one of the litigants, and he may find himself unable to transcend this sympathy . . . he may be incapable of preserving a strict impartiality, no matter how sincere may be his desire to do so.<sup>1</sup>

It is right to remind ourselves, however, that the personal equation works both ways. The House of Lords has of late widened many legal doctrines which had in their older forms become inequitable, measured by their age. The capacity of the Law Lords for legal statesmanship belies President Roosevelt's explanation of the lack of it in the U.S. Supreme Court.

In general, however, it must be admitted that the working classes have, in the matter of Workmen's Compensation, owed less to the Courts of Justice or to Parliament, or even to Trade Unions, than to Factory and Medical Inspectors, from Tremenheere to Sir Duncan Wilson, the present Chief Inspector of Factories (1938), and not least to the late Sir Thomas Legge, whose efforts to abate white-lead

<sup>1</sup> *Cambridge Law Journal*, vol. i, page 8. Cf. in this connexion the Presidential Address of the Rt. Hon. Sir Wilfrid Greene, Master of the Rolls, to the Holdsworth Club of the University of Birmingham, May 13, 1938.

poisoning led to his premature resignation. These officials have been the bulwark of the health of workmen against their own carelessness and apathy, and against the efforts of insurance companies to avoid or evade the liabilities of insuring employers. They had simultaneously to combat official and administrative inertia, still a powerful drag upon the machine, the alleged 'lack of Parliamentary time' and fear of Parliamentary opposition and obstruction, which has repeatedly prevented action when the time was ripe and the need urgent. The interested opposition of employers and insurance companies (though Workmen's Compensation even in the mining industry has never averaged more than 3d. in the £ on wages and is seldom more than 1d. in the £) and, only too often, the indifference of employees to their own welfare and that of their fellows have also prevented reforms.

When a National Health Insurance system was introduced, Workmen's Compensation might have been more closely related to it.<sup>1</sup> When the Ministry of Health was created, it might have assumed responsibility for the administration of the Factories and Workmen's Compensation Acts: neither possibility was in fact envisaged or seriously discussed. These systems were left to run on independent lines, sometimes divergent and sometimes conflicting.

Employers in the United Kingdom were placed under a legal obligation to their workmen, but were under no compulsion to take steps, by means of insurance, to place themselves in a position to discharge their obligations. Large employers did so as a matter of course, but not always small employers, particularly of farm workers and domestic servants and in the building trade. The administration of the Acts was entrusted not to an administrative body but to judges and registrars; the detailed interpretation of the Act was left to the Courts and not (as in the case of the National Health Insurance Acts) to an *ad hoc* body with wide discretionary powers to give effect to the declared intentions of Parliament. Nothing was done which might hamper the 'bargaining' proclivities of commercial insurance companies or em-

<sup>1</sup> Under §§ 51, 52 of the National Health Insurance Act, 1936, if an insured person is incapacitated by reason of an accident, injury, or industrial disease, in respect of which he would be entitled to compensation or damages, Sickness Benefit is not payable unless the compensation or damages received are less than the benefit he would otherwise receive, in which case the Society pays the difference. If there is delay in recovering compensation the Society may pay benefit on loan and recover later. Any agreement for a lump sum in compensation must be reported to the Society.

Where an insured person has received compensation or damages of a weekly value of less than that of the benefit which would ordinarily have been payable and a part only of the benefit has been paid, he is treated, on again falling ill within twelve months of his recovery, as having received benefit, not for the full number of weeks for which it was in fact paid, but only for a period proportionate to the sum he has actually received as benefit.

Except for this provision, the two Acts are unrelated.

ployers' mutual assurance associations in their dealings with employers and injured workmen respectively.

Accident prevention under the Factory Acts was left to Factory Inspectors. The Home Office Museum of safety appliances<sup>1</sup> is admirable; an excellent system of instructing new entrants in safety measures is conducted by the Ministry of Mines under the auspices of the Miners' Welfare Fund; and much is being done in factories by the Safety First Association, an unofficial body. But almost no use has been made of cinema films in this connexion, and accident prevention is not placed prominently before students in technical schools and in the technical departments of universities.

The Employers' Liability Act of 1880 was introduced by Mr. Gladstone under pressure from the Tory Opposition, whose Bill, drafted by Mr. Brassey, he adopted, in the absence of an officially prepared measure. Its principle was remedial rather than preferential—to restrict the application of the defence of 'common employment', which had become a public scandal. The efforts of the Opposition were devoted to widening and extending its scope. Joseph Chamberlain, borrowing amply and rightly from Bismarck, supported by several Judges in the public press, urged the need for a comprehensive system of social insurance, and foreshadowed compulsory insurance. This Act has in large measure been superseded by the Workmen's Compensation Acts, but remains on the Statute Book as a deterrent to careless employers.

The next decades witnessed fresh advances: dissatisfaction with the Act grew in volume, but it was not until 1893 that it took legislative shape. In opposing the Government Bill introduced in that year Mr. Joseph Chamberlain moved

that no amendment of the Law relating to Employers' Liability will be final or satisfactory which does not provide compensation to workmen for all injuries sustained in the ordinary course of their employment and not caused by their own acts or defaults.

The Bill was so amended in the Upper House as to preserve, with certain safeguards, the right of contracting out, a principle dear to the older Liberals and to some Tory peers, and was unwise dropped. Four years later a Conservative Government took up the matter and enacted the Workmen's Compensation Act of 1897 which effected a revolution in the relationship between employer and workmen. The guiding principle was that no question thereunder could arise as to the default of the employer, whose negligence or the reverse was to be no measure of his legal liability to the injured person. It was admittedly

<sup>1</sup> Horseferry Road, London, S.W. 1.

a tentative measure, and the scale of payments, though higher than that customarily adopted by Poor Law Guardians for single persons, was low and took no account of the number of their dependants. The right to contract out was maintained, but under such safeguards that the number of persons affected thereby was, and still is, very small, for no contracting-out agreement was or is legal unless certified by the Registrar of Friendly Societies to be as favourable to employees as the Act itself. The Act as a whole was opposed by Liberals as unduly burdensome to employers, and restrictive of 'liberty'. Compulsory insurance was again discussed, but public opinion was not yet ripe for such a change, and insurance offices, foreseeing lucrative business, threw all their great weight into the scales against it.

The Act of 1897 was a great step forward, but it did not constitute a final settlement. Industrial accidents increased and litigation was heavy. Dissatisfaction grew, and in 1903 a Departmental Committee was appointed to consider amendments and extensions of the existing Acts. The Committee showed that the grave abuses that existed were due in large measure to the fact that insurance companies had learnt how to bring the maximum of pressure upon injured workmen to accept less than their just dues, thus minimizing the undoubted benefits of the Acts. Upon this subject Judges, Inspectors of Factories, and Trade Union leaders were unanimous. A State scheme of compulsory insurance was again urged, and again rejected, though the Committee hinted at it as an 'ultimate possibility'.<sup>1</sup>

The Workmen's Compensation Act of 1906 followed: it extended the principle to almost all industries and occupations. It included certain industrial diseases, and gave the Home Secretary power to add others. It widened the protection afforded to workmen, but not the amounts payable, though the evidence given before the Committee of 1904 showed these to be inadequate. The 'waiting period' was reduced from fourteen days to seven: the powers of County Court Registrars were extended.

No legislative developments of importance took place between 1906 and 1921. The Home Office added new industrial diseases to those already scheduled, and cautiously extended the operation of the Act. The scales of payment to injured persons were temporarily increased in 1917, and various minor adjustments were made.

Before the Treaty of Versailles had been ratified a Departmental Committee under Mr. (later Sir) Holman Gregory, K.C., was appointed by the Home Office to inquire, among other matters, into 'the working of the present system of the payment of compensation to

<sup>1</sup> The germ of such a system is to be found in § 8 (7) of the existing Act, relating to industrial diseases.

workmen for injuries sustained in the course of employment, and to consider and report whether it would be desirable to establish a system of accident insurance under the control and supervision of the State'.

This Committee, of whose deliberations we give a very full account, reported against a State system of accident insurance,<sup>1</sup> but made a number of recommendations, including the appointment of a Workmen's Compensation Commissioner with wide powers. This, the principal proposal in the Committee's Report, found no place in the Bill eventually introduced by the Coalition Government in 1923. The procedure of the Act of 1906 remained substantially unaltered, its principles almost unmodified. Scales of compensation were increased: Registrars of County Courts were endowed with further powers, but, in general, the structure of the Act of 1906 still dominates Workmen's Compensation in Britain. Though the Committee favoured compulsory insurance within a system of private insurance, no action was taken to give effect to their recommendations until Mr. Godfrey Nicholson, M.P., who had been successful in the ballot, procured in 1934 the application of this principle to the mining industry.

The extravagant cost of the existing system had long been notorious: the threat of a compulsory scheme of State insurance sufficed to bring about an agreement between the insurance offices and the Home Office for a statutory maximum cost ratio of 37½ per cent., plus about 5 per cent. for legal and medical expenses incurred by them on their own behalf, as compared with the proposed maximum all-in expense ratio of 30 per cent. advocated by the Holman Gregory Committee.

The Act of 1923 which, as consolidated in 1925, is the basis of Workmen's Compensation to-day, was not an agreed settlement but a makeshift compromise. Bills to reform the whole system were tabled in the following and almost every successive year until 1938, when a Royal Commission was appointed to consider the whole question afresh. The fact is that Industrial Assurance, Compulsory Insurance generally, and Workmen's Compensation are particular methods of meeting certain social needs, and can only be successfully handled if they come before Parliament in the form of a well-considered measure, sponsored by a Minister imbued with something of Joseph Chamberlain's almost revolutionary zeal, supported by permanent officials with something of the dispassionate ardour of the late Sir Robert Morant. In such a case, the Minister concerned attracts the interest and support of the most active spirits on his own side of the House, and the

<sup>1</sup> It appears to have regarded its terms of reference as precluding consideration of State insurance against accidents to other than workmen, e.g. road accidents.

constructive criticism of his opponents. A Minister, however able, who is piloting through the House a measure in which he has little personal interest, representing the least that can decently be insisted on, or an agreed compromise between rival interests, cannot hope to arouse enthusiasm.

The Holman Gregory Report illustrates von Ranke's saying that 'the study of history reveals the fact that we do not learn by history'. The Committee brought to bear on its task great ability and much patience: it amassed a great volume of evidence the analysis of which has led us, in this volume, to write what may be described as a Minority Report based upon the same data. Whatever deductions be drawn therefrom one conclusion seems unescapable. No inquiry into the subject, however painstaking, can reach a satisfactory outcome unless it is based upon an impartial and dispassionate survey of the British system of Workmen's Compensation, in the light of history, as revealed by earlier inquiries, and of alternative systems.<sup>1</sup> Any investigation which regards the permanence of the existing framework as axiomatic will be sterile of fruitful results, and can but complicate yet further the excessive intricacies of the existing law. This indeed is the lesson of 1923-34 as described in these pages. In the words of Southey (*Madoc in Wales*, Pt. IV) we are

Still at morning, where we were at night,  
And where we were at morn, at nightfall still,  
The centre of that drear circumference,  
Progressive, yet no change.

So far from being 'water-tight', as Professor J. H. Clapham has recently suggested, the system of Workmen's Compensation is, by the almost unanimous voice of all those who are in close contact with its operation, full of grave defects: extravagant in the costs of operation, wasteful of human health in its indifference to the need for rehabilitating injured workmen, and a source of constant friction and often ill feeling between employers and employed and not infrequently between members of the medical profession and their clients. We have not attempted, in this volume, to describe in detail the actual working of the present system, in the matter of accidents and occupational diseases, in its psychological, physical, and legal aspects, or sociological aspects of the general scale of compensation, weighted as it is against the lowest-paid workers, or the merits and demerits of lump-sum settlements and disability schedules. These matters, together with the related problems of recovery and rehabilitation and reserved occupa-

<sup>1</sup> Now fully set forth in a publication of the International Labour Office including *Evaluation of Permanent Incapacity for Work in Social Insurance*, 1937.

tions for injured persons and a further analysis of the law and of existing insurance organizations, will be dealt with in our second volume, which will also contain our tentative views as to the lines on which reforms should proceed.

We here anticipate our conclusions only to record, as already set forth in our concluding chapter, our belief that the appointment of a Workmen's Compensation Commissioner is an indispensable adjunct to any scheme of reform, and that by reducing the present excessive costs of administration, whether by a system of State insurance or otherwise, much can be done to ameliorate the lot of injured workmen without further expense to employers. 'Pour bien sçavoir les choses', wrote La Rochefoucauld, 'il faut en sçavoir le détail.' This is nowhere truer than of Workmen's Compensation: the measure of its success or failure cannot be gauged by statistical averages, but by personal knowledge of the working of the system in its application to a great number of individual cases. Men partially or totally disabled in industrial occupations and dependants of men who have died 'on the job' are scattered over the country, often forgotten and cold-shouldered by their fellows, once their legal claims have been met. Their voting-power is negligible: self-respect usually prevents them from proclaiming their plight. Like the victims of road accidents, but unlike disabled ex-service men, they have no organization other than their respective trade unions to which they can look to plead their cause, and only one worker in three belongs to a trade union. Legal expenses, which are often heavy, are inseparable from any effective step they can take.

It should be recognized that the object of Workmen's Compensation, and of the processes of physical and mental rehabilitation dependent thereon, is not merely to compensate the injured person but to protect his status and position as a member of society, and that of his dependants, so far as either are endangered by the injury.

Health insurance, old-age pensions, and public assistance in all its forms are services for which the community as a whole has made itself liable. Unemployment insurance and workmen's compensation are properly regarded as a liability of industry, whose responsibility for the latter is complete and unquestionable, though it can only successfully be shouldered by much closer co-operation than at present exists between employer and employed. In this connexion we desire to draw particular attention to the very successful 'contracting-out' schemes of certain important undertakings, set forth at length in an Appendix to this volume, on lines which provide for larger benefits to injured persons, joint administration by employers and workmen, and effective measures for the prevention of accidents.

If the Royal Commission now sitting will follow the example of

some earlier Commissions and appoint sub-commissioners to investigate a few thousand sample cases, instead of being content to sit in London and receive selected evidence at second hand from officials and official bodies, they will not only reveal facts hitherto unknown, but will disclose examples of nobility and frailty, improvidence and foresight, generosity and meanness, courage in adversity and, on rare occasions, helpless surrender to fate, which make up the west and warp of life as it is.

If this book helps the Royal Commission—and, we hope, a far wider circle—to realize in the light of history how relatively meagre have been the results of sixty years' effort, how much remains to be, and can be, done, we shall have accomplished our task, and made our own modest contribution to National Fitness and Social Justice.

It is certain that the statesman whose privilege it is to carry through Parliament the reform of the present system of Workmen's Compensation will be able with confidence to echo the words Sir Robert Peel uttered in his last speech as Prime Minister: 'It may be that I shall leave a name sometimes remembered with expressions of goodwill in the abodes of those whose lot it is to labour, and to earn their daily bread by the sweat of their brow.'

The achievement of a new diplomatic equilibrium in Europe which may mark the cessation of the threat of armed strife will be followed by an era of even more active competition between great industrial nations in every branch of commerce and industry, which may well require us to make changes as profound and far-reaching in every branch of our national life as any yet attempted elsewhere. We have no choice but to emulate or make terms with industrial and trading systems organized and directed by governments enjoying full control over every form of productive activity. To compete with such systems by the methods developed in the last century is impossible. Just as the service of every man and woman must be mobilized for defence, so must the brains and manual skill of the nation be purposefully organized and husbanded, with the single object of making the fullest use of our only true resources—our national character, our soil and what lies beneath it, and our abilities as managing trustees of a great part of the world's surface. We must combat waste at every point. The purpose of this work, as of the succeeding volume, is to show how great is the waste of human skill and energy entailed by the legislative system under which industrial accidents and diseases are treated, and to suggest how it may be reduced in the interest both of the individuals concerned and of the nation of which they are, as members of the industrial army, an integral part.

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## PART I

### INDUSTRIAL ACCIDENTS AND THE RISE OF INDUSTRY

‘Politics are dull as ditch-water, but ditch-water is interesting and instructive when looked at through a microscope.’—**LORD ROSEBERRY** to **LORD NOVAR**

**ELIZABETH HALDANE.** *From One Century to Another*, 1937, p. 183

#### I. FROM THE EARLIEST BEGINNINGS UNTIL 1880



## CHAPTER I

### FROM THE EARLIEST BEGINNINGS UNTIL 1880

‘Two things become essential to the peace and comfort of all social unions of mankind; —one, that each should have the means of acquiring the property he needs for his substance and welfare; and the other, that he should be accustomed to some employments or amusements, in which his activity and time may be consumed without detriment to others or weariness to himself.’

SHARON TURNER, *The History of Anglo-Saxons*, 1836.

THE student of Social History who seeks to bring to light historical facts relating to the early beginnings of what is known to-day as ‘Workmen’s Compensation’ will be surprised at the paucity of sources available and the scanty references to the subject in contemporary records. Compensation for loss of life, limb, or earning capacity, consequent on accidents, must always have been a concomitant of employment in some recognized trade or profession, yet ‘industrial’ accidents and their social and legal consequences are not even mentioned in most standard treatises on economic history, such as those of Ashley, Cunningham, or Rogers. Even more surprising is the silence on this subject of Brentano, von Schmoller, Unwin, and other chroniclers of the gild system. We possess an able and exhaustive description of the historical development of laws and institutions relating to the protection of workers—*Arbeiterschutzgesetzgebung*—from the pen of Professor Elster of Jena, whose narrative<sup>1</sup> takes us back to such early institutions as the Kuttenberger Mining Ordinance, enacted in Bohemia in 1300–10. But these and other sources are primarily concerned with medieval craftsmen, journeymen, and apprentices, with the protection of their interests, the regulation of their wages, and with the provision made for sickness, distress, including even death benefits and other social insurances, and they contain no references to any specific provision against accidents. The fact is that economic history is in large measure the reflection of a social picture which the historian himself derives from the life of his times. The first study of craft gilds began in the early days of the trade union movement, when its problems invested parallels between gilds and the unions with particular significance, just as economic historians became interested in early industrial monopolies of the fifteenth to seventeenth centuries, at a moment when modern cartels and trusts seemed to foreshadow a possible organization of industry on the basis of state-controlled monopolies.

<sup>1</sup> Cf. *Handwörterbuch der Staatswissenschaften*, vol. i, Jena, 1923, pp. 401 sqq.

Viewed from this angle the lack of historical information on the subject is understandable. The principle of employers' liability is not yet sixty years old in England, that of workmen's compensation barely forty, and the application of these principles is still in the experimental stage. When the great economic historians of England and Germany embarked upon their fundamental studies of medieval and pre-capitalistic organization, the problem of accidents and their social importance was not present to their minds. They knew of the legislation for the prevention of accidents passed during the first half of the nineteenth century, but it had not yet developed principles of its own.

In any examination of the social or legal issues relating to accidents or industrial diseases three distinct problems arise, which require independent examination. None are free from great difficulties.

- (1) *How to prevent accidents in the interests of the worker*
- (2) *How to establish liability of the employer* in the eyes of the law to recompense in some measure a workman injured in his employ and
- (3) How far as a matter of justice and policy, to establish the *right of the workmen to compensation* for injury (unless serious and wilful disobedience is judicially established). This conception of a right to compensation not based upon the fault or *culpa* of the employer was a consequence (1) of the administrative difficulty of proving such negligence of the employer as might involve him in liability, or such negligence of the employee as would affect the employer's legal obligation and (2) of the fact that many accidents happened where there was no negligence on either side.

The payment of compensation and its assessment is a matter of accounting and, as a matter of convenience, the payment is covered by insurance in order to distribute the loss; but the loss is the incapacity caused by the accident itself.

Injuries suffered by men engaged in industrial work (other types of injury are, broadly speaking, excluded) constitute only one side of the problem of accidents, whether caused by an Act of God, or of the King's Enemies, by Restraint of Princes or Civil Commotion, or as a consequence of individual carelessness. Though such accidents must have been a constant feature of life in mines and quarries, workshops and farms, in mills and on board ship, we may be sure that when employers lived for the most part near and in close touch with employees and their families, and few employed a large number of men, it was seldom that injured workmen or their dependants, in case of accidental death at work, were left to apply for relief to the Guardians of the Poor under the Elizabethan Acts. Had the early historians of our social legislation perceived a direct connexion between the modern developments of employers' liability and workmen's compensation on the one hand, and the rules of early craft and trade gilds on the other,

they would certainly have spared no pains to trace it. But they all wrote before workmen's compensation became a live issue in domestic politics. We shall endeavour in this work to throw some light upon this almost forgotten subject.

The Common Law in England, as elsewhere, has always given a measure of protection to workmen against the torts of their employers, but, as we shall show later, it proved inadequate to the requirements of the nineteenth century. The Common Law casts upon an employer personal responsibility for injuries caused to any person by negligence or breach of duty, not only of the employer himself but also of any person in his service, if that person is acting within the scope of his employment, the doctrine of 'common employment' being a later development. It is immaterial that the employer knows nothing of the circumstances of the accident, or that he has not expressly directed or authorized the conduct which led thereto. The basis of the right of compensation for industrial accidents was thus at the outset sought in the classical conception of liability, contained in civil codes founded on the precept, *sic utere tuo ut alienos non laedet* of Roman Law.

A Common Law liability, however, only exists if some blame attaches to the individual employer, and the victim of an industrial accident can only claim compensation under the Common Law if he can show his employer to have been at fault. Every member of a society is entitled to require of others a modicum of respect for his person, of care and of caution. From the application to daily life of this principle alone there emerges some sort of employer's liability; but, under Anglo-Saxon Common Law, each individual must himself bear the consequences of accidents of which he is a victim, unless such accidents are attributable to the fault of a second party. In practice, therefore, the Common Law leaves the door of justice open to disputes as to the degree of responsibility, if any, in each case; and the cost of and delays consequent upon legal proceedings necessary to establish liability, in which the injured workman must always be the plaintiff, tended greatly to limit the protection afforded by the Common Law to the injured workman.<sup>1</sup> The possible dangers to the workmen which might arise from machinery or any sort of industrial appliance were recognized by the courts from the earliest times. While the Common Law gave an individual application to the principle of responsibility, the fact that

<sup>1</sup> Cf. for Common Law: *Report of the Departmental Committee on Compensation for Injuries to Workmen*, 1904, pp. 9-11; A. R. Ruegg, *The Employers' Liability Act 1880 and the Workmen's Compensation Acts 1897 and 1900*, 6th ed., 1903, *passim*; Sir Frederick Pollock's article on 'Tort' in *Enc. Brit.*, 11th ed., 1911, vol. 27; International Labour Office, *Compensation for Industrial Accidents. Draft convention concerning Workmen's Compensation for accidents*, Geneva, 1925, pp. 1 and 5; also Joseph L. Cohen, *Workmen's Compensation in Great Britain*, 1923, pp. 84-5.

an appliance to which an accident was due might be, and at first always was, destroyed by order of the courts, whether or not the injured person was at fault, suggests that a more general interpretation of *culpa* was envisaged than one dependent upon the 'personal' conduct of the employer. An order for the destruction of a piece of machinery which had caused the death was, in practice, a measure of protection to the workman and the public, and might entail a severe penalty to the owner; it was, too, a warning to the owners of similar machinery, which extended far beyond the Common Law maxim of *alterum non laedere*.

One of the earliest juvenile industrial accidents on record occurred in 1540:

A yonge childe . . . standinge neere to the whele of a horse myll . . . was by some myshap come within the sweepe or compasse of the cogge whele and therewith was torne in peces and killed. And, upon inquisition taken, it was founde that the whele was the cause of the childe's dethe, whereupon the myll was forthwith defaced and pulled down.

This is an example of the application of the Law of Deodand which was repealed in 1845 (9 & 10 Vic., c. 62), though not before juries had, with the consent of judges, made it ineffective in practice by finding that the cause of death was not the machine itself but some small part thereof, the destruction of which was ordered. The system was of no use to the dependants of the injured party; for, as Lord Campbell stated when speaking in support of the Act now known by his name, 'any pecuniary mulct that might be inflicted would go to the Crown'<sup>1</sup>.

The position at Common Law of the worker at the outset of the last century, as regards the risks of his occupation, may be summarized as follows: Apart from special agreements existing between master and servant, a master was liable to his servants only for injuries caused by his own negligence. Injury to a servant might have arisen from an accident, from the nature of a service, or from negligence, whether of a master, of another servant of the same master, or of a stranger. If the injury was purely accidental the loss was to be borne by the victim; if it arose from the nature of the service, the servant had to bear it himself, for he was supposed to have undertaken a service to which certain risks were necessarily incident; if he was injured thereby, it was the fortune of war—or an act of God (see p. 103) for which no one could be held responsible. If the injury was caused by the negligence of a stranger or a fellow employee, the servant had his ordinary remedy in law against the wrongdoer. The law did not regard the fact that in most cases the legal claim was directed against some one who had no means to satisfy a judgement made against him. So, in practice,

<sup>1</sup> Cf. *Hansard, Parly. Debates*, vol. 85, pp. 967 sqq.

the only case in which he could recover damages from the master was where the injury had been clearly caused by the master himself.<sup>1</sup>

It may, however, be assumed that the meagre protection afforded by the law to workmen was hardly felt in practice before the rise of more elaborate technical appliances and the first beginnings of modern industry in the eighteenth century. Industrial work (other than in mines) was seldom dangerous to the workers and rarely led to the disastrous fatalities which characterized industrial life at a later period. Accidents to life and limb were not regularly recurring features of industrial occupation, and the care of occasional victims could be, and usually was, borne by employers or by public charity. Journeymen and apprentices lived for the most part under the roof of their master and were treated as members of a family.<sup>2</sup>

We may safely assume that no distinction was made between adventitious illness and disabilities accidentally caused. It appears from German sources that the medieval town took care of those of its servants who were injured by accidents.<sup>3</sup> In the later medieval development of handicraft industry, gilds supplemented the scanty provisions of the Common Law, and the provision made for sick members and for death benefit doubtless applied to those injured or killed by some industrial or other accident. When the crafts developed into bigger units and the patriarchal house of the master no longer formed the social frame of employment, the organizations of their own formed by the journeymen served the same social purpose as did the original all-embracing gilds. There were apparently 'boxes' of journeymen intended, as Professor Ashley explains, 'to receive subscriptions and furnish alms for sick or impoverished members'.<sup>4</sup> In German-speaking countries the 'box' of the gild brothers became the symbol of the whole fraternity, who were termed *Bruderladen*, the term *laden* signifying, apparently, a 'drawer' (*Schubfach* or *Schublade*) in a chest, from which term the importance of this early form of safe clearly emerges. Had the term existed in English it would probably have been 'fraternity box' or 'fraternity-drawer'.<sup>5</sup>

<sup>1</sup> Cf. an instructive (unsigned) article in the *Enc. Brit.*, 11th ed., vol. 9, p. 357; 'Employers' Liability and Workmen's Compensation'.

<sup>2</sup> Cf. Sir William Ashley, *English Economic History and Theory*, 10th ed., vol. i, 1920, p. 101. 'The relations of master and man were not very dissimilar to those of the head of a household to the sons of the family.'

<sup>3</sup> Cf. Uhlhorn, Muensterberg and Laum, in *Handwörterbuch der Staatswissenschaften*, 1923, p. 943: 'Help was primarily given to those injured in the service of the town: they got assistance sometimes for a number of years. The beginnings of the provision for the surviving family go back to this period, evidence however is scanty. If a citizen was injured by an Act of God (e.g. hail or conflagration) he received help from the town.'

<sup>4</sup> Cf. Ashley, loc. cit., pp. 121-2; also Chambers and Daunt, *London English*, 1931, p. 42.

<sup>5</sup> Cf. for particulars of later 'box' clubs in England, devoted to sickness and death benefit, Wilson and Levy, *Industrial Assurance*, 1937, pp. 13-14 and 21. Scots in London in the reign of James I had such a box. It is now in the hands of the Scottish Corporation in London.

The German *Knappschaftskassen* or *Knappschaftsvereine*—mutual associations of miners—are definitely stated to have emerged from the original *Bruderladen*, and the latter are recognized to represent the first genuine carriers of social insurance. Professor Röpke, one of the leading living authorities on gilds, states that these mining associations gave compensation for illness as well as accidents.<sup>1</sup> Even to-day in Austria the German *Knappschaft*, i.e. mutual state-controlled mining associations entrusted with workmen's compensation, are still called *Bruderladen*.<sup>2</sup>

In this case there is, indeed, a direct connexion between the old gild, with its social provisions for the worker, including compensation for accidents, and the modern social machinery devoted to this end. In the words of Mr. C. M. Knowles, LL.B.:

Germans have been used throughout history to some form of social insurance. There were the old Gilds; it was also part of their Poor Law system; and when Trade Unions grew up in Germany only to be suppressed by Bismarck, he found it necessary to continue the system of social insurance which was really inherent in Germany democracy.<sup>3</sup>

Though the unions were not, either in England or in Germany, the direct descendants of gilds, we may regard them, with Brentano, as 'the gilds of the present time'.

It may well be true, however, that the gild and co-operative systems lasted very much longer in Germany than in England—and that they exerted a powerful influence throughout the eighteenth century.<sup>4</sup> In the German mining industry the State endeavoured by administrative measures to counteract the rapid development of unlimited capitalism, clinging to the doctrine that a mutual mining association (*Gewerkschaft*), and not a proprietary company, was the ideal form of mining undertaking.<sup>5</sup> It may well be that the gild spirit was so steeped in the idea of social provision, if not of insurance, as to have developed a form of

<sup>1</sup> 'In regard to the fixing of these provisions', he writes, 'the numerous Mining Laws, of which already the so-called Kuttenberger Bergordnung of Wenzel II of Bohemia of 1300 regulates the mining associations, are in general identical.' Cf. *Handwörterbuch d. St.*, 1923, vol. v., pp. 723 sqq.

<sup>2</sup> Cf. *Knappschaftskasse*, in *Handwörterbuch der Staatswissenschaften*, 1923, vol. v., p. 72 ff. Cf. also Dr. Lass in *German Workmen's Insurance as a social institution*, compiled by order of the Imperial Insurance Office (Berlin) for the Universal Exposition of St. Louis, 1904: 'The fundamental ideas of the social law existed long ago in the mining industry. More than 500 years ago there was compulsion amongst miners for the purpose of mutual assistance against the dangers of trade, the workers being bound to join the association.'

<sup>3</sup> Cf. *Departmental Committee on Workmen's Compensation*, 1920, vol. i, Cmd. 908, p. 76, hereafter referred to as the Holman Gregory Committee.

<sup>4</sup> Cf. Levy, *Monopolies, Cartels and Trusts in British Industry*, 1927, Chap. IV; 'Comparison with German Development'.

<sup>5</sup> Cf. Levy, loc. cit., p. 76.

traditional social feeling which, in England, where capitalist industry on strictly competitive lines had developed much earlier and grown much more quickly, had died away long before the question of relief for the injured attained its urgent modern aspect.

It is obvious that in countries where the gild system, though constantly weakened and in competition with the growing number of factories, existed longer than in England, the conception of the necessity of social assistance had been kept alive long after it had vanished here. It was only in 1842 that in Prussia—industrially the most advanced part of Germany—the workmen became legally free to move from town to town. In 1845 the Legislature gave new powers to the old gilds and even encouraged the formation of new ones. Increased powers were given to these new gilds (*Innungen*) to form sick, burial, and relief societies; and new groups—resembling the *Berufsgenossenschaften* (see p. 78) under the existing German Workmen's Compensation law—were formed with the view of bringing the members of a common industry into one society. In the interval between the passing of the law of 1845 and the legislation of Prince Bismarck in 1883–7, there was much discussion as to the extent to which workmen should be required by law to become members, and to avail themselves of the insurance benefits offered by, the gild *Innung*.<sup>1</sup> The gild spirit, though criticized by capitalist employers as a reactionary movement, here formed the link between the anarchic status of the unprotected worker and the advent of protection through compulsory state measures.

In the English mining industry no associative organizations such as were found on the Continent seem to have existed.<sup>2</sup> Yet mining was probably the first field in which further provision against accidents was found necessary, and there is evidence that a feeling of responsibility was early manifested, particularly as to the costs of funerals. The oldest extant version of the mining laws relating to the lead mines of Mendip, dating probably from the reign of Queen Mary, contains the following:<sup>3</sup>

Item and yeffe here be Any man by thys doubtfull and dangerous occupasyon do tack hys deth and ys slayne by faulyng of the yerth upon his, by drawning, by styfflyng with fyre or other wyse as in Tymes past many has been murthyrd . . . the coroner nother no offyser of the Quyns Maiesties hath not to do with the boddy nother with hys or there goodes but the myners of that occupayson shaull fetch

<sup>1</sup> Cf. for a lucid description of the controversy: *Fourth Special Report of the U.S. Commissioner of Labour on Compulsory Insurance in Germany*, Washington, 1895, pp. 32–6.

<sup>2</sup> Cf. J. Neff, *The Rise of the British Coal Industry*, 2 vols., 1932. Had the author come across such a social organization and provisions he would certainly have mentioned it in part IV of his treatise, pp. 168 sqq.

<sup>3</sup> Cf. J. W. Gough, *The Mines of Mendip*, Oxford, 1930, pp. 72–4. In a letter of John Locke to Robert Boyle of May 5th 1666, the dangers of the Mendip Mines were particularly stressed; *ibid.*, loc. cit., pp. 134–6.

up that ded boddy out of the yerth at their own proper costs and charges an all so to burye hym in Chrystyn buryall.

It was in coal-mining that modern accidents, varying from numerous cases of individual deaths and injuries to disaster on a catastrophic scale, first began to develop. The first traceable—probably the first actual—accident of the modern type was in Liége in 1515, where a flooded mine caused the death of eighty-eight miners. The accident startled the world, but Neff contends that disasters of such magnitude could hardly have occurred in England at this time, for, until the days of Elizabeth, the number of miners working together in single pits did not exceed a dozen or so, and very few colliery owners kept more than three pits in operation.<sup>1</sup> In the next hundred years, however, dangers had already greatly increased.

With the expansion in the demand for the new fuel which began in Elizabeth's reign, it seems probable that every hundred tons was extracted with a heavier toll in life and limb than before.<sup>2</sup>

But, adds Neff,

Mine-owners were not seriously concerned over the dangers faced by the men every time they descended into the pits.

If anything was done by the growing number of mining proprietors, the leading motive was to protect valuable property against damage and destruction.<sup>3</sup> We read in a contemporary pamphlet<sup>4</sup> relating to the north English coal area:

Some Gentlemen have, upon great hope of profit come into this country to hazard monies in Coale pits. Master Beaumont, a Gentleman of great ingenuity and rare parts, adventured into our mines with his thirty thousand pounds; who brought with him rare Engines, not known then in these parts, as the best to boore with, Iron Roddes to try the deepnesses and thicknesses of the coale, rare engines to draw water out of the pits, to the Staithes, to the River, etc.

Even at this early date from 500 to 1,000 persons were employed in this district by a single employer. The financial risks now consequent on the increasing size of the coal-mine undertaking induced the owners to seek protection against serious accidents, particularly against 'choke damps' which 'kill invisibly'. One William Poole, proposed, as early as 1620, a 'curious' recipe for the 'dampe', but colliery owners do not appear to have applied preventive measures before really serious accidents had occurred,<sup>5</sup> and even then their object was not always to protect their workmen.

<sup>1</sup> Cf. Neff, loc. cit., vol. i, p. 13. Most mines were then surface mines and attained depth only by following faulted seams.

<sup>2</sup> *Ibid.*, vol. ii., p. 169 sqq.

<sup>3</sup> Cf. Levy, *Monopolies*, pp. 7 and 11.

<sup>4</sup> Cf. W. Gray, *Chorographia or a Survey of Newcastle-upon-Tyne*, 1649, p. 25.

<sup>5</sup> Cf. Neff, loc. cit., vol. i, p. 364.

A wave of new industries, partly genuinely novel in character, partly a development of old crafts, set in at the beginning and rapidly developed towards the end of the seventeenth century. Although the factory had, as yet, scarcely appeared on the industrial horizon—the system of early industrial capitalism at first assuming forms which enabled the worker to follow his trade in his own home—this development was coupled with great technical progress. Long before the 'Industrial Revolution' we have examples of 'works' founded in connexion with new technical processes, such as the glass works of Sir Robert Mansell in Newcastle in 1619, which survived till about 1855, or the late sixteenth-century wire works at Tintern. In the textile industries old forms of organization, exploited by the 'putting-out' system, prevailed, and technical progress remained slow until the period of the great inventions of the eighteenth century.<sup>1</sup> Social investigators and historians have, as we have observed elsewhere, scarcely inquired as yet into the extent to which provision was made in the seventeenth and eighteenth centuries for workers injured or killed in the course of their work, and available sources are few and scanty. It is probable that the social provision for the worker was best where the former crafts organization existed as a nucleus or, at least, as a reminder. Dr. Thomas J. Ashton, of the University of Manchester, shows that early in the eighteenth century the position of small craftsmen in the iron industry was not unfavourable, though they were financially dependent upon capitalism. There existed among the workers of the Crowley undertakings a compulsory system of contributory insurance against death, sickness, and old age. A doctor, a clergyman, and a schoolmaster were maintained jointly by the firm and its employees. The work here was done partly by small master-men whom the Crowleyes supplied with iron, and partly in their factories.<sup>2</sup> The doctor was doubtless called upon in case of accidents, though these were probably infrequent. We also know that in one of the oldest 'factories', owned by the Mineral and Battery Works and located in 1575-1600 at Tintern, Monmouthshire,

the workers were assured of continuity of employment, and in times of sickness and old age received maintenance.

This also related to periods of unemployment.<sup>3</sup>

<sup>1</sup> Cf. Levy, *Monopolies*, pp. 5 and 7, for the capitalist organization of the small crafts and the 'putting out' system. Cf. also *The New Industrial System*, 1936, pp. 20 and 34-6. Cf. also G. N. Clark, *Science and Social Welfare in the Age of Newton*, 1937, for an account of the inventive spirit.

<sup>2</sup> Cf. Thomas J. Ashton, *Iron and Steel Industries in the Industrial Revolution*, 1924, p. 193.

<sup>3</sup> Cf. Henry Hamilton, *The English Brass and Copper Industries*, 1926, p. 307, also

Further evidence of the desire of the new generation of manufacturers to make social provision for their workers is furnished by what is known as the 'Soho Scheme' in the eighteenth century. This was an Insurance Society belonging to the Soho Manufactory,<sup>1</sup> which was proposed and instituted as a mutual assurance society by Matthew Boulton. The Soho Scheme resembled, but was more ambitious than, Crowley's social organization. Every worker or employee in the factory was required to be a member of the society and had to pay an entrance fee of one shilling and regular contributions beginning with a halfpenny per week on a wage of 2s. 6d., and rising to 4d. per week with a wage of 20s. There was strict supervision of the society by two governing bodies: (1) a committee of six members, and (2) six elders appointed quarterly by Matthew Boulton himself. We find in the Rules of 1796 the following provision relating to accidents:

Each person becoming a member of this society not to be entitled to receive pay, unless from an accident met within his employ, until he has been in the Club three months.<sup>2</sup>

From this it clearly emerges that there was not only provision for the effects of accidents, but that members were eligible immediately on joining, whereas sickness or death benefit necessitated a membership of at least three months.

We may deduce from these examples that employers in early modern industry—apart, probably, from mining—were trying to make provision against industrial hazards. Whatever their motives or underlying principles, the fact remains that few early capitalist employers took steps to mitigate the casual ill effects of occupation which, at a later date, were overshadowed by accidents, as a mass problem. Accidents were regarded as an inherent consequence of industrial employment and entailed no responsibility on the part of the employer except where his negligence could be proved; it was the workman's duty himself to make what provision he could through his friendly societies. The gild system of mutual associations, controlled by the rules of corporations, was overlaid by a tendency to regard the individual as responsible, in all circumstances, for any accident that occurred to him, and by the conception of 'labour' as a 'commodity' the price of which, paid to the working-man, was to take account of the risks he ran. (So

p. 321. The works were founded in May, 1568, as 'Governors, Assistants, and Society of Mineral and Battery Works'; cf. *ibid.* 17-18 for particulars.

<sup>1</sup> The date of the founding of this works is not known. The record of an edition of the existing 'rules'—'Rules for conducting the Insurance Society belonging to the Soho Manufactory'—dates from 1792.

<sup>2</sup> Cf. Erich Roll, Ph.D., *An Early Experiment in Industrial Organisation*, 1930, pp. 15, 225, 228, and 232.

late as 1880 (see p. 41) it was argued that provision for compensation might make workers careless.) In medieval days a mill had been destroyed because it caused the death of one child; three centuries later the Chimney-Sweepers' Bill, passed by the Commons in 1817, was decisively rejected by the Lords. Although this Bill was intended to protect children against shameful and bitter cruelties, fully established by official inquiries, Lord Lauderdale argued that the Bill, like that for regulating labour of children in cotton factories, 'originated in a mistaken spirit of humanity'! The first reforms tarried till 1834 and—so little were the extreme exponents of economic Liberalism interested in protecting the labouring poor—it was not until 1864 that the employment of children in sweeping chimneys was finally prohibited.

While documentary material as regards workmen's accidents and their general and social effects is scanty, there is one early treatise throwing light upon the existence and development of industrial diseases, a matter of equal importance in the history of workmen's compensation. This classic study is that of Bernardino Ramazzini, the father of modern industrial hygiene,<sup>1</sup> whose book, *De Morbis Artificum*, first published in 1700, written towards the end of a long life (1633–1714), aroused profound and widespread interest.<sup>2</sup> It is an elaborate narrative and full analysis of all sorts of diseases which befell artisans and tradesmen and to this extent deals with only one part of our theme, which is concerned with workers in the early days of the industrial revolution, when, in many trades, the master was no less liable than his servants to the diseases of his trade. Ramazzini gives a full account of diseases liable to affect small independent masters working with their journeymen and apprentices in trades not yet organized on factory lines, as also of laundresses, apothecaries, blacksmiths, and others, under conditions wholly alien to modern industrial capitalism. On the other hand, we find in his work, written in a spirit of broad humanism which finds no counterpart in contemporary religious or political treatises in this country, a description of trades which correspond closely in their structure and organization to the development of those modern forms of capitalist manufacture, which have rapidly developed in England and throughout Europe since the sixteenth and seventeenth centuries.<sup>3</sup> One early field of this organization was represented by mining, and

<sup>1</sup> It was translated into German in 1711 (Leipzig), into English in 1705 (London), into Dutch in 1724 (London), and into French in 1777.

<sup>2</sup> Cf. Dr. Franz Koelsch, *Bernardino Ramazzini, der Vater der Gewerbehygiene*, Stuttgart, 1912.

<sup>3</sup> Cf. Hermann Levy, *Monopolies, Cartels, and Trusts*, 2nd ed., 1927, and *The New Industrial System*, 1936, first two chapters.

Ramazzini begins his treatise with a full account of the 'Diseases of Metal Diggers'.<sup>1</sup>

He instances the

difficulties of Breathing, Phthisic, Apoplexy, Palsy, Cachexy, Swellings of the feet, Failing of teeth, Ulcers in the Gums, Pains and Tremblings in the joints, so that upon the whole their Lungs and Brains were affected . . . Hence it is, . . . that those who dig minerals in the Mines are short-lived; and the women who marry them have the opportunity of matching with several husbands.

He expresses his horror of this kind of work:<sup>2</sup>

In those places where there are Mines, to dig in them was anciently and is still reckoned a sort of punishment fit to be inflicted upon criminals.

We learn from Gallonius, *De Martyrium Cruciatibus*, that in ancient times the Christians were usually condemned to dig in Mines (*Damnati ad Metalla*.)

He described at length remedies against these diseases and those which befall men engaged in 'towns and cities' in the 'Beating, Melting and Refining Works', viz. in manufactories. He speaks of Potters' Works, for pottery had at an early date become a manufacture. He treats separately of the diseases of copper- and tin-workers, of glass-makers, glass-grinders, and painters, the diseases of such as work upon brimstone and of those who work in lime and plaster of Paris, stating expressly that such occupations were in his day more perilous to workmen than in former times.

In days of antiquity, especially in Rome, where there were many baths for public use, workmen of dirty trades received considerable benefit by washing off the impurities contracted in their way of business and retrieved their strength in baths, as Baccius de Thermis well observes. But now-a-days those excellent provisions no longer exist, and so the city tradesmen are deprived of singular benefit.

He describes further as particularly dangerous the 'Condition of those who comb Silk Cakes'.

The poor people [he writes] who comb these cakes are usually troubled with a vehement cough and a great difficulty of breathing; few of them live to an old age in that way of business.

and in this connexion declares:<sup>3</sup>

. . . it is a sordid profit, which is accompanied with the destruction of health.

The same complaints about dust were heard in the English silk industry at the end of the last century.<sup>4</sup> It is humiliating to reflect that

<sup>1</sup> Cf. Bernardino Ramazzini, *Health Preserved* (in two Treatises). Part I, On the diseases of Artificers which by their particular calling are much liable to. Translated by R. James, M.D., Second Edition, 1750, p. 36.

<sup>2</sup> Cf. p. 37.

<sup>3</sup> Cf. pp. 197-8.

<sup>4</sup> Cf. Dame Adelaide Anderson, *Women in the Factory*, with a foreword by the Right Hon. Viscount Cave; 1922, p. 107.

things were little better at the beginning of the twentieth century, two hundred years later.<sup>1</sup>

Ramazzini also called attention in two separate chapters to the diseases of such who stand, when they are at work, [and] such as sit too much,<sup>2</sup>

both conditions being still in our day a matter of frequent complaint. Ramazzini envisaged all these problems from the angle of the hygienic doctor who tried to analyse the evil and to prescribe provisions for its prevention or cure. There was no 'social question' then, and the author has nothing to say of the general social incidence of industrial diseases or any legislative proposals to cope with the economic effects on workers. But it is clear that the social evils connected with these diseases had so deeply impressed him that he boldly sought remedies.

The ill effects upon the health of workers of modern industrial development, of machinery, work in mines, of the progress in the means of locomotion, of chemical inventions, reached its tragic zenith between 1800 and 1850.<sup>3</sup> We do not propose to describe this development in detail; it should be a tempting task for economic historians, who have too long neglected this side of the social problem. Their minute researches would disclose the full and heartbreaking tragedy which the army of workmen patiently endured before they could voice their protest against conditions which were considered by their masters, and by society at large, as necessary and inevitable. We may give some outstanding illustrations from the Report of 1842 of the Royal Commission on the Employment of Children.<sup>4</sup>

A surgeon in practice at Bilston, in S. Staffs., who was medical attendant to about twenty-six clubs, having amongst them upwards of 2,000 members, all but 100 in collieries and ironworks, noted that 'some children go to work (in the pits) as early as seven or eight; *many have met with accidents before they are eight*' (p. 9); but another surgeon, from Shropshire, said that children were employed at the age of six 'where they are much distressed, or where there are large families' (p. 12). 'Parents could not keep their children if they were not allowed to go down: it takes more to keep a pitman than anybody: pit lads eat more than other lads, a vast' (evidence of a collier, p. 17). A proprietor who tried to prevent boys under twelve from going down the pit was defeated by the men, who rebelled (p. 19), 'for an orphan or the son

<sup>1</sup> The introduction of machinery for cleaning material before carding—steadily urged on the occupiers—helped to solve the problem of efficient extraction of dust. *Annual Report of the Chief Inspector of Factories*, 1906, p. 220, and 1920, p. 75.

<sup>2</sup> *Loc. cit.*, pp. 210 sqq.

<sup>3</sup> Cf. Gilbert Stone, *A History of Labour*, 1921, pp. 214–15.

<sup>4</sup> *Parliamentary Reports*, vol. xv, 1842.

of a widow could earn more than three times as much as his guardian could get from the Poor Law' (p. 19). The fact that children (of either sex) of five and upwards were largely employed could, added the Commissioners, 'never have been brought to light by the examination of the coal owners only, who . . . seldom or never descend into the pits or have any personal knowledge or take any superintendence whatever of the workpeople'. The incorrectness of their evidence, due less to mendacity than to ignorance, was clearly established. Many great coal-owners, said one Commissioner, would now learn the truth for the first time, and with sorrow and regret.

The chief agent of a great colliery, 'having his attention drawn to the subject by the increased number of minor accidents in the pits', attributed it to the fact that parents sent children to the pits at an earlier age because of the legal restrictions in force against employment of young children in factories where they would be exposed to far less hardship and hazard (p. 24).

The employment of women in pits to within a few days of childbirth sometimes resulted in fatalities, and still-born children in such circumstances were common (p. 27); but one female coal-drawer mentioned a woman who 'went home and washed herself, took to her bed, was delivered of a child, and was back at work under the week', and a collier claimed that his wife's health had not suffered though she worked in the pit till she was thirty. Of her four children, two, born alive, died afterwards, two were still-born. Work in the pit, said another miner, 'ruins women; it crushes their haunches, bends their backs, and makes them old at forty. They get so weak that they have to take the little ones down to relieve them.' A female coal-bearer concluded, 'You just tell Queen Victoria . . . that she would have the blessings of all the Scotswomen if she would get them out of the pit and send them to other labour'. Girls so employed were generally ignorant of household duties and of any of the domestic arts. The colliers declared the employment of girls in the pits to be a scandalous practice; the owners deplored it but, though Lord Dundonald had done his best to arouse public indignation in 1793, and Robert Bald of Edinburgh had drawn attention in 1808 to a picture of deadly physical oppression and systematic slavery 'applied to tiny boys and girls, and women of all ages', little public interest was aroused. The African Slave Trade and the conditions in which slaves lived in the Southern States of the U.S.A. attracted far more attention. *Uncle Tom's Cabin* became a classic overnight; no English writer seems to have attempted to perform a like service to England by writing a novel dealing with what the Psalmist terms 'darkness and cruel habitations' (Ps. 74, v. 21.)

The evidence as to the great frequency of accidents in the forties is dreadful to read. Crushing of limbs, premature death from miscarriage, childbirth, or exhaustion are recorded upon almost every page of the report of the Commissioners. The greatest burden was borne by orphans and pauper children sent from districts remote from mining areas to be apprenticed, till they were twenty-one, to miners who sent their own children to learn other trades. 'Cases of exceedingly gross ill usage were rare', but cruelty was very common. An Overseer of Oldham mentioned a recent case where three boys had been thrashed for stealing the dinners of others.

One of the biggest of the boys, or a young man, got the boy's head between his legs, and each of 18 or 20 boys in the pit inflicted 12 strokes on the boy's rump and loins with a 'cut'. I never saw such a sight in my life; the flesh of the rump and loins was beaten to a jelly in the worst case (aged 10). The doctor said he could not survive, but he did, and is now in a fair way. Had any boy refused to give his strokes he would be served the same way himself. It is not an extraordinary case but a general punishment, and the old men who gave evidence seemed to think it was perfectly right and justifiable though the boys had been neglected by their masters and were ill supplied with food. But magistrates almost never break indentures (p. 44).

Though the children 'were well-tired at night', not many fell ill (p. 52). Bad ventilation shortened the lives of miners (p. 50), and of timber, by years; black- or choke-damp, commonly known as 'wild-fire' by miners, burned many to death; the heat was enervating to children, who looked sometimes 'as wretched as drowned rats'. A justice of the peace held the Davy lamp to have proved in practice to be a curse to the country, for it had enabled colliers to work where they otherwise could not, and had often superseded a proper renovation of air. Evidence in support of his statement, with particular reference to children, was not lacking, though it was admitted that miners sometimes interfered with ventilation (p. 53) because it made their candles 'sweat' (i.e. run)—a defect from which the Davy lamp was free.

Lack of drainage often caused positive disease—sore feet, swollen legs, swelled faces—especially where the water was salt and 'cankery', stiff necks and severe boils or carbuncles in men and boys who were fresh to the pit. Men in the prime of life, working all day in water, died of cramp of the limbs (p. 61).

A fruitful cause of injury was the custom in small pits, whose masters were short of capital, of using 'foals', children of either sex, who 'hurried', viz. drew the 'clan' or basket of coal with a girdle and chain. The girdle was round the waist; the chain between the legs. The girdle caused great blisters which were agonizing; but no boy dared cease work, lest he be beaten mercilessly by the 'butty' or his 'reeve',

under whom he worked (p. 68). A careful examination of the statistics of infantile and adolescent deaths in mining as compared with other areas in England and Wales shows conclusively that the conditions under which children worked in mines were responsible for a death-rate which was in some cases four or five times as high as in agricultural districts.

'Coal-bearing' was restricted almost exclusively to girls and women, who bore coal on their backs up trap-stairs or turn-pike stairs. In the east of Scotland girls began to carry coal from the age of six, carrying half a cwt. at a time, fourteen long and toilsome 'rakes' or journeys a day. They were often 'perfectly beautiful children' and very intelligent, but 'had the strap' if they failed to carry a ton a day (p. 91). A fifteen-year-old girl carried 1½ cwt. up 1,500 feet of stairs from wall-face to daylight forty or fifty times a day; some carried even more, for 'females submit to work in places where no man or even lad could be got to work in'. Boys in east Scotland began to hew coal at nine, and worked sixteen hours three days a week, five and six days out of twelve, and twelve hours the other five days (p. 110). Children were for convenience kept in the pit longer hours than adults, were not allowed time for meals (p. 120), and were habitually thrashed with great cruelty (p. 131); but the supply of children exceeded the demand. Only in north and south Ireland was ill treatment of children unknown.

The following passage occurs in a once popular little book published in 1865, entitled *Our Coal and Our Coal Pits; the people in them and scenes around them*, by A Traveller Underground.

I have on different occasions, and in different pits, questioned a large number of lads, but could not elicit from them very much more than a description of their present labours, their peculiar hardships (not always quite truly stated), and their past accidents. It is at first quite strange to hear of the numerous accidents, commonly called 'lamings', met with by many of the boys. Thus, while a Greek reckoned by Olympiads, a pit-boy reckons by limpings. 'I don't know when', said one, in reply to my question about the date of a particular event—'but it was just after last laming'. 'No,' said another, 'I never learned to read till last laming but one.' 'I was lamed twice in Howden pit', said another, 'and once in Wall-bottle'; and a little lad of some fourteen years of age spoke of having been 'lamed three times while he was a driver, and once since he has been a half-marrow'. Another had lost a finger in Felling Colliery, and broken his leg in Walker Pit, and cut his face in Percy Main. These things they had suffered before they were perhaps eighteen years old, in any case, but the hardy little fellows soon recover, and go down to work again; if they are unacquainted with learning, they are well versed in laming.

Under the heading *Evening in a Pit-Village* the same author wrote complacently:

A hewer will be distinguished by his incurvation of body, inclining to the shape

of a note of interrogation. His legs will have a graceful bow, only it will be in the wrong direction. His chest will protrude, like that of a pigeon. His eye will have the glance of a hawk half-awake, and his face somewhat the look of a pound of pit candles. The lads look either gawky or slouching, or daring and careless; but, poor fellows! they have all had enough work, and I ought not to criticise them.

Most classes of labourers acquire a character in the gait and general aspect accordant with the nature of their occupation, and so it is with pitmen. As they advance in life, their knees and backs frequently exhibit a curved appearance from constant bending at their work; but this does not appear to have connection with disease of these parts. I have often felt surprised that greater suffering and disease should not result from the admixture of gaseous exhalations in the atmospheres of the mines; but these appear for the most part innocuous as to general health, though I have repeatedly seen cases of inflamed eyes from exposure to a blower of gas (the carburetted hydrogen). That the health of the boys is for the most part good is frequently shown in a remarkable manner, by their favourable recovery from severe wounds and other accidents. Nor do I believe that the growth and development of the frame is unfavourably affected. They generally exhibit a muscular athletic appearance, though thin in person, and often of pale complexion.

In the general condition of the pitmen, there are many circumstances which probably tend to counteract any injurious influence which the nature of their employment might otherwise exert over health. Amongst these may be enumerated the warm flannel dresses in which they work; the thorough washing of the entire person which they practise after the hours of labour, the situation of their houses, the plentiful supply of coals which they enjoy, and the ample means which they generally possess of providing sufficient supplies of wholesome food for their families.

The 'outward man' distinguishes a pitman from every other operative. His stature is diminutive, his figure disproportionate and misshapen; his legs being much bowed; his chest protruding (the *thoracic* region being unequally developed). His arms are long, and oddly suspended. His countenance is not less striking than his figure; his cheeks being generally hollow, his brow overhanging, his cheek-bones high, his forehead low and retreating; nor is his appearance healthful; his habit is tainted with scrofula. I have seen agricultural labourers, blacksmiths, carpenters, and even those among the wan and distressed stocking weavers of Nottinghamshire, to whom the term 'jolly' might not be inaptly applied; but I never saw a 'jolly looking' pitman.

... We must look to other causes, in a measure, for an explanation of the bodily defects enumerated above. Pitmen have always lived in communities; they have associated only among themselves; they have thus acquired habits and ideas peculiar to themselves: even their amusements are hereditary and peculiar. They almost invariably intermarry, and it is not uncommon, in their marriages, to commingle the blood of the same family. They have thus transmitted natural and accidental defects through a long series of generations, and may now be regarded in the light of a distinct race of beings.

The first Factory Act of importance, passed in 1833, gave inspectors power to enforce the fencing of machinery. Early statistics are seldom

reliable, but the following figures were officially accepted as authoritative in 1835:<sup>1</sup>

*Fatal Accidents in Mines on the Banks of Rivers Tyne and Wear*

1710-1810

|  | Number of deaths |
|--|------------------|
| Perished by explosion of fire damp . . . . . | 1,479            |
| Perished by inundations . . . . .            | 84               |
| Perished by casualties . . . . .             | 37               |
| Total . . . . .                              | <u>1,600</u>     |

From 1810 to 1835 1,125 lives were lost in the same mining district. The figures relate only to fatal accidents and to a particular district, but the growth of mining accidents in general may be inferred therefrom.

When railways appeared, the extent of danger to the workers was vastly increased.<sup>2</sup> One of the first steps taken to reduce fatalities by making accidents more costly to the employer was made as regards railway accidents.<sup>3</sup> In 1846 a Select Committee, shocked by the casualties among the 200,000 navvies engaged on railway construction, reported in favour of making the companies pay compensation for accidents, thus 'fixing that party with the liability who has the greatest power to prevent the injury and the greatest means to repair it'.<sup>4</sup> It was soon realized that, notwithstanding safety appliances and

<sup>1</sup> Cf. *Report of Select Committee on Accidents in Mines*, Sept. 4th 1835, p. iv.

<sup>2</sup> Between 1898 and 1902 the figures were as follows:

*Mean Annual Death-rate from Industrial Accidents per 10,000 employed in principal trades*

| Mean Annual death-rate for all occupations given below | Per 10,000 |
|--|------------|
| Seamen . . . . .                                       | 64.5       |
| Coal-miners . . . . .                                  | 12.9       |
| Quarrymen (1899-1902) . . .                            | 12.0       |
| Metal-workers . . . . .                                | 11.0       |
| Railway servants . . . . .                             | 9.6        |
| All factory operatives . . . . .                       | 1.9        |

*Note.* The figures in the Report are as here given.

Cf. *Report on Compensation for Injuries to Workmen*, 1904, p. 232.

<sup>3</sup> Special legislation had long been in existence to ensure the safety of the passengers carried outside stage-coaches and other carriages, so that some sort of precedent might have been believed to exist. The respective enactments as regards coaches, &c. were: 28 Geo. III, c. 57, 1788, with amendments in 1790, 1806, and 1810. In 1810 all these enactments were repealed by 50 Geo. III, c. 48, and new provisions for safety substituted. In 1820 a more stringent Act (1 Geo. IV, c. 4) was passed, for punishing criminally drivers of stage coaches and other carriages for accidents occasioned by their wilful neglect, superseding or supplementing in this respect the Common Law.

<sup>4</sup> Cf. *Select Committee on Railway Labourers*, 1846, xiii, p. 427.

other means for the avoidance of accidents, risks were increasing faster than remedies. Sometimes a new contrivance to ensure safety proved to be a cause of danger, as when an increase of ventilation in coal-mines made the Davy lamp no longer safe and necessitated the invention of a new lamp.<sup>1</sup> In the words of a Chief Inspector of Factories,<sup>2</sup> accident prevention

discloses an ever recurrent series of problems to be met. Coincidentally with improvement in the technique of safeguarding, new machines and new sources of power each with its special risks are introduced.

An explosion in the Darnley Main Colliery on Jan. 24th 1849, involving seventy-five deaths, shocked the public conscience. Thanks to the efforts of Hugh Seymour Tremenhere, whom the English worker had good reason to thank for his courageous attempts to cope with the problems of accidents, liability, and compensation, public inquiries were held and reports made to Parliament.<sup>3</sup> Explosions with such disastrous consequences had been rare except in the North before 1845, but greater depths were soon attained and explosions of fire-damp were common.<sup>4</sup> Legislation followed, and the Act of 1850 (13 & 14 Vic., c. 100) was the first of a long series of enactments relating to the inspection of coal mines in Great Britain, in which Tremenhere was destined to take a leading part. The spectacular disasters had little effect upon the total annual deaths and, though they helped to focus attention upon the dangerous character of the industry, the public, like those engaged in the industry, regarded these things as inevitable, or the consequences of ignorance or avarice.<sup>5</sup>

<sup>1</sup> Cf. George Howell, *Labour Legislation, Labour Movements and Labour Leaders*, 1902, p. 422.

<sup>2</sup> Cf. *Annual Report of the Chief Inspector of Factories and Workshops*, 1932, p. 7.

<sup>3</sup> H. S. Tremenhere (b. 1804, d. 1893) was instrumental in bringing about fourteen Acts of Parliament, all having for their object the amelioration of the conditions of the working classes. His first official appointment was that of Assistant Poor Law Commissioner in 1842.

<sup>4</sup> Cf. J. H. Clapham, *An Economic History of Modern Britain*, 1932, p. 100.

<sup>5</sup> In his edition of Bacon's *Essays* (published in 1873) Archbishop Whately of Dublin comments thus on the observation that 'there is no passion in the mind of man so weak, but it mates and masters the fear of death'.

'Of all the instances that can be given of recklessness of life, there is none that comes near that of the workman employed in what is called dry-pointing; the grinding of needles and of table-forks. The fine steel-dust which they breathe brings on a painful disease of which they are almost sure to die before forty. And yet not only are men tempted by high wages to engage in this employment, but they resist to the utmost all the contrivances devised for diminishing the danger; through fear that this would cause more workmen to offer themselves, and thus lower wages!'

The case of sailors, soldiers, miners, and others who engage in hazardous employments is nothing in comparison of this; because people of a sanguine temper hope to *escape* the dangers. But the dry-pointers have to encounter, not *risk*, but the *certainty*,

Factory accidents and mishaps were less dramatic in their incidence, but official reports from the beginning of the Victorian era reveal them even then as extensive. In one of them<sup>1</sup> it is stated that for a period of six months no accidents were caused by machines required by the Act to be securely fenced (see p. 23); though in the same period accidents arising from machinery in general were 570, of which eight were fatal. In one of his reports an inspector explained:<sup>2</sup>

The self-acting mule is under the charge of a workman called the minder . . . the minders are often very careless, and do not stop the carriage, and accidents are perpetually occurring, several of which have been fatal. It is usually very difficult to prove the guilt of the minder. If the master could do no more than to issue his orders that the law must be obeyed it would seem to be unjust to make him answerable for the carelessness of the minder, although there are, I believe, many precedents, in other laws, of a master being made liable for the acts of his servants.

The Reports are full of such cases.<sup>3</sup>

The early Factory Acts [writes Sir Donald Wilson], were subject of bitter controversy. The case for the Acts, though it had considerable backing among employers, was mainly sponsored by philanthropists. The opposition included not only some employers who thought that their interests would be adversely affected, but also politicians and theorists who deprecated any form of State interference with trade or industry, at that time a formidable body.<sup>4</sup>

In the fifties a strong controversy emerged about certain sections of the Factory Act, 1844, which was for a long time and, to some extent, still is the legal basis of accident prevention. Three times the inspectors of factories had to issue circulars in 1854 and 1855, two on special request by Lord Palmerston, pressing upon factory owners the necessity of 'securely fencing' shafts as required by section 21 of the Act. After the second of these circulars was issued a meeting of manufacturers was held in Manchester, where most of the opposition,

of an early and painful death. The thing would seem incredible, if it were not so fully attested. All this proves that avarice overcomes the fear of death. And so may vanity: witness the many women who wear tight dresses, and will even employ washes for the complexion which they know to be highly dangerous and even destructive to their health.'

In ascribing to avarice the desire to earn a living wage, the Archbishop was typical of a generation of Liberal statesmen who, like John Bright, opposed legislative action to reduce hours of labour, or to limit the employment of children, but his observation as to the readiness of men to risk almost certain death sooner than take precautions has parallels in many industries to-day.

<sup>1</sup> Cf. *Reports of the Inspectors of Factories*, Home Office, half-year ending Oct. 31st 1848, p. 17.

<sup>2</sup> *Ibid.*, Report for half-year ending Apr. 20th 1849, p. 9.

<sup>3</sup> *Ibid.*, pp. 14-17 and 38-9.

<sup>4</sup> *Annual Report of the Chief Inspector of Factories and Workshops for the year 1932*, 1933.

led by cotton-spinners, was centred, and the Factory Law Amendment Association was formed. The ostensible object of this body was to oppose the Factory Inspector's requirements with regard to the fencing of shafting. Dickens in *Household Words* (1855) referred to it as the 'Association for the Mangling of Operatives'. In the face of their opposition and also of individual occupiers, the Inspectors could make little headway in securing compliance with the safety requirements of the Act. The opposition even secured an Act in 1856 (introduced in Parliament by Colonel Wilson Patten, the Member for a Lancashire constituency), which amended the Factory Act, 1844, in a way agreeable to employers. It was in vain that Mr. Corbett, opposing the Bill, declared that while for several years after the passing of the Act of 1844 it was not thought necessary to fence horizontal shafting more than seven feet from the floor, the Inspectors found that

the most horrible accidents were caused by shafting not seven but eight, nine and even ten feet from the floor; their attention was called to the fact that many of those accidents were owing to their own neglect of duty in not putting the law fully into force.

Mr. Corbett cited numerous cases in which workpeople had been killed or received serious injury in accidents which occurred on overhead shafting. In spite of strong opposition the Bill was passed. In the seventies it was stated that employers had become much more sympathetic to the work of Factory Inspectors. Yet in the Report of the Chief Inspector of Factories for 1878 we find the statement that,

although every occupier is being supplied with Abstracts and Registers necessary for him to commence with, the number of those who will read the Act is comparatively small.

Economists like Michel Chevalier were full of praise of the Belgian system. 'The employers in the coal mines', he wrote in 1848, 'are grouped into various associations in order to secure annuities (pensions) for injured workmen or the dependants of workmen killed in mines. The means are procured by subsidies of the State or the Province, by contributions from employers, and by deduction made from wages which, however, at the present time amounts to only one-half per cent.' In 1846 there were in Belgium 169 such institutions with a membership of 52,000 miners, no small figure for those days. Chevalier did not fail to call attention to the general principle underlying this form of organization:

Le système disciplinaire de l'industrie n'est point à supprimer; nulle part, pas plus en république qu'ailleurs, on ne peut se passer de mesures de police.<sup>1</sup>

<sup>1</sup> Michel Chevalier, *Lettres sur l'organisation du travail*, Bruxelles, 1848, pp. 171-2 and 175.

A few years later the Medical Officer to the Post Office, Waller Lewis, visited France to make a concise digest of the laws and *ordonnances* in force in France for the better regulation of noxious trades and occupations. His conclusions, so far as they relate to our matter, did not differ in principle from those of Tremenhere, for he declared in his Report to the Home Office (then Home Department): '... the system of keeping an active supervision by means of a department of the Police over the noxious trades and occupations likely to interfere with the public health, appears to be very successful. While the interest of the workman is strictly cared for, the masters themselves do not complain of any undue or harsh interference by the authorities.'<sup>1</sup> The social working of 'paternal government' seemed, therefore, much more favourable to those who took the care to study it carefully than the theoretical deductions of *laisser-faire* doctrinaires of those days were willing to admit.

Official investigation revealed the helpless position of an injured workman or, in the case of fatal accidents, of his family. A manager of mines in Stafford, asked by the 1835 Committee what provision existed in his neighbourhood for the victims of accidents, replied that there was none.

Except the clubs that are about the neighbourhood; we have no field clubs. In cases of accidents I give their families something till they get better again; at the time of the last accident I gave the widows and families money, when I thought proper, five or six times.<sup>2</sup>

Everything was, in practice, left to the casual benevolence of the employer or his deputies.

Meanwhile, the law, far from giving greater protection to the workmen, at a time when dangers, risks, and accidents increased, was at this juncture interpreted by the courts, in one direction, in a manner greatly to their detriment. The Common Law in such cases took no cognizance of the mutual relations existing between plaintiff and defendant, so that workmen stood in the same position as the general public; viz. a person guilty of negligence was liable to make good any damage resulting from accidents. Until 1837, however, no test case arose as to the effect of the Common Law upon the liability of employers to workmen injured in the course of their employment. Workpeople were seldom in a position to enter an action at law to assert or maintain their rights or claims. They had few trade unions to

<sup>1</sup> Report on the Laws and Ordonnances in force in France for the regulation of noxious trades and occupations, 1855. *Accounts and Papers*, xlv, 1854-5, p. 16. See also p. 2, *supra*.

<sup>2</sup> Cf. *Select Committee*, 1835, loc. cit., Q. 2800. Cf. *ibid.*, pp. 14-17 and 38-9.

fight their battle; workmen then, as now, were too poor to gain access to the courts, and the Trade Unions had no regular legal advisers.

The test case of 1837, which has influenced employers' liability as hardly any other 'judge-made law' dealing with social matters, is that of Lord Abinger in *Priestley v. Fowler*. This was an action brought against a butcher by one of his servants for injuries caused by over-loading a van which he had been ordered to accompany. The van was in charge of a fellow servant to whose negligence, it was alleged, the over-loading was attributable. It was expressly decided upon this ground that the servant injured could not recover compensation from his master.<sup>1</sup> Lord Abinger, adapting a judgement of the supreme Court of Massachusetts, declared that if a master were liable, without proof of negligence on his part, for an injury caused to a workman by others in his employ: we should have a master liable to his servant for negligence of the chambermaid in putting him into a damp bed; for the negligence of the upholsterer in sending a crazy bedstead, whereby he was made to fall whilst asleep; for the cook for not properly cleaning the saucepans; for that of the butcher in sending in bad meat, and for that of the builder, who by putting in bad foundations caused the house to fall and bury master and servants together.<sup>2</sup>

The next case was *Hutchinson v. The York, Newcastle and Berwick Railway Company*, in which the judge decided that as the servant causing and the servant suffering the injury were both engaged in a common service, the master was not responsible for negligence. He went even further and held that the implied contract of service involved acceptance by the servant of the risks incidental to the service on the principle of *volenti non fit injuria*.

In another case, *Wigmore v. Jay*, it was decided that a foreman was a fellow worker, and therefore not entitled to compensation.<sup>3</sup> This was the doctrine of Common Employment.<sup>4</sup> It made recourse by a workman to the courts in assertion of his claims to compensation still more precarious; the workman injured, or the family losing a breadwinner, was from this time onwards treated worse than a stranger. Judges were influenced by the spirit of the times and by a theory of an implied

<sup>1</sup> Cf. A. H. Ruegg, *The Laws regulating the Relation of Employer and Workman in England*, 1905, p. 134.

<sup>2</sup> Lord Abinger, who adduced no earlier decisions in support of this judgement, was, as James Scarlett, known as one of the most brilliant, but politically as one of the most prejudiced, advocates of his day. He was a Whig, but so opposed to the Reform Bill that he left the party and represented Norwich in 1831 in the Tory interest. In 1843 an allegation that he had allowed party considerations to affect his judicial decisions resulted in a motion, which was defeated, for a humble address to Her Majesty for his removal.

<sup>3</sup> This was followed by *Johnson v. Lindsay & Co.* (1891, H. L.) which established that a manager was also a fellow servant.

<sup>4</sup> Cf. for *Common Employment* Ruegg, loc. cit. *passim*; Howell, loc. cit., pp. 423-4; *Enc. Brit.* under 'Employers' Liability': also C. T. Chorley in *Modern Law Review*, June 1938.

contract under which the servant worked. So, in *Priestley v. Fowler*, Lord Abinger observed that the plaintiff

must have known as well as his master, and probably better,

that the wagon was insufficient and, instead of allowing it to be overloaded he could have refused to use it. That he would inevitably in such a case suffer dismissal and loss of livelihood was not considered, or, if considered, rejected as irrelevant.

These decisions greatly diminished the employer's liability and discouraged applications by workmen to the courts. It was not easy to define precisely what constituted a common employment and this made things worse for the workman by increasing the legal difficulties in each case. There is little judicial authority as to the limit at which work for the same employer ceases to be work in common employment. It does not depend on difference in grade, for all engaged in one business, from the manager to the apprentice, are within the rule. It does not depend on difference in work, if the work each is doing is part of one larger operation. It does not even necessarily depend on difference of locality; a servant who packs goods at the factory and a servant who unpacks them in the shop may well be in common employment. Lawyers have even argued (in *Haynes v. Harwood*) that a constable is in common employment with a member of the public! The financial control of one company by another is not sufficient to create a presumption of common employment, but amalgamation may do so.

'It is', writes Lord Macmillan,<sup>1</sup> 'the special virtue of the common law that it possessed powers of growth and adaptation to the changing conditions of society and the new standards of conduct. . . . Judges . . . have to administer the law as they find it, but all the time are themselves slowly shaping and developing it . . . the choice which they make in the particular instance results inevitably in the expansion or restriction of the doctrine applied or rejected. . . . When, as happens from time to time, the law itself presents a choice, . . . it is impossible, as it is undesirable, that the decision should not have regard to the ethical motive of promoting justice.'

The life of the law is not in logic but experience; the judge in this case was out of touch with experience. The doctrine of common employment has been repeatedly condemned by great judges as unjust; it has been assailed in Parliament but, though recently mitigated by *English v. Wilson & Clydes Coal Co. 1938 A.C.*, remains in full validity, a monument to the ill-judged conservatism of successive law officers. It can scarcely be removed, however, unless it is replaced by statutory provisions, with which we shall deal at length in a later stage.

<sup>1</sup> *The Law and Other Things*, 1937, p. 48.

Another still-existing hindrance to the workman in recovering damages against his employer for injury caused by negligence in an action at Common Law was found in the defence of 'Contributory Negligence'. Briefly stated, this doctrine is that if the evidence proves that the injury was a consequence of the joint negligence of both parties, the injured person cannot recover. This doctrine is of general application to all cases where one person seeks to recover damages caused by the negligence of another. In industrial accidents the circumstances are often such as to give rise to a defence on this ground to the workman's claim against his employer. In such accidents as arise from the use or cleaning of machinery, there are frequently grounds for alleging some carelessness on the part of the injured person, even though the machinery itself is in a dangerous condition. It followed, therefore, that even if there were no 'doctrine of common employment' the injured workman's claim was liable to defeat on the ground of contributory negligence, to an extent which made the recovery of compensation at Common Law always difficult and almost always doubtful.<sup>1</sup> At a moment when workmen most needed the protection of the Common Law it was interpreted by the courts against them through the imposition of three limitations arising from the doctrines or principles of

1. 'Common Employment',
2. '*Volenti non fit injuria*', and
3. 'Contributory Negligence'.

The result was that by the middle of the nineteenth century the Common Law had come in practice to afford little protection to the workman.

Social reformers noted with envy the more generous views of courts of justice and of legislatures in continental countries, where industrial development was still in its infancy. Tremenhere visited the Continent at the end of the forties and came back full of praise of what he had seen. In 1849 he wrote:

No one can be conversant with the great benefit that the admirable Schools of Mines in France, Belgium, and Germany confer on these countries, without a regret that this country has so long neglected such obvious means of usefulness.<sup>2</sup>

In another Report he emphasized the efficiency of the German *Knapp-schaftskasse* (see p. 8) under the administrative control of the Mining Authorities (*Bergamt*) since the days of Frederick the Great. On his return from a visit to the industrial area of the Rhine in 1848 he

<sup>1</sup> Cf. *Report on Compensation*, 1904, p. 10.

<sup>2</sup> Cf. *Report on the Explosion in Darnley Colliery*, Feb. 14, 1849, loc. cit., p. 7.

recorded that relief in case of sickness was granted for 8–13 weeks, medicine and medical attendance given free of charge, and a pension to the widow if the husband was killed by an accident.<sup>1</sup> He explained that

The mode of management in these institutions differs so much from what would fall in with the habits of this country, that it is needless to explain it. If the principle is good, of which there can be no doubt, there ought to be no great difficulty in bringing it into effect here; including as it does so many more useful objects than the ordinary and so often bankrupt societies of this country, formed of small numbers and under the most imperfect management.

Tremenhere had seen at an early date—as had Dr. Edwin Chadwick<sup>2</sup>—the great dangers of friendly societies managed on financially unsound or even fraudulent lines in contrast to already existing municipal organizations in German towns.<sup>3</sup> Both men, in different fields of social service, reported in favour of state control and assistance. Neither Socialism nor Collectivism had, as yet, taken shape; the choice was between continental ‘paternalism’ and ‘self-help’ on the lines to be later advocated by Samuel Smiles and most Liberal politicians.

These basic and incontrovertible facts, which impressed such men, were not recognized as such by their successors several decades later, so slow were English Liberal politicians to learn, and so loth to abandon some of the unlovely and unsocial aspects of the harsh creed they professed. Tremenhere utilized his practical experience in foreign countries to formulate broad principles. He stated that miners had received some measure of protection in many countries with widely varying political systems, and far more energetically in Europe than in England.

The military Government of Napoleon did not overlook these considerations . . . I have pointed out the results obtained by the constitutional Government in Belgium, namely that by means of inspection and good management in that country, while the production of coal between the years 1834 and 1844 had increased 20 per cent. and the number of workmen 17 per cent., the number of fatal accidents had diminished 15 per cent. . . . I have, in this Report, exhibited the results of the care taken by the so-called paternal Governments of Germany, under their late forms, with the same humane and useful object in view.<sup>4</sup>

During the later development of our inquiry the German example, so

<sup>1</sup> Cf. *Report of the Commissioner appointed under the Provisions of the Act of 5 & 6 Vict. cap. 99 on the State of Population in Mining Districts*, 1849, p. 15.

<sup>2</sup> Cf. Wilson and Levy, *Burial Reform and Funeral Costs*, 1938, Historical Part, *passim*.

<sup>3</sup> Cf. Edwin Chadwick, *A Supplementary Report on the Practice of Interment in Towns*, London, 1843, s. 53, pp. 55–69 for the organization evils in England—and s. 128, p. 117 and pp. 205 sqq. and 218 sqq. (reprint of burial regulations in Frankfurt and Munich) contrasting with its conditions in Germany.

<sup>4</sup> *Report on Mining Inspection in Germany*, 1849, p. 12.

early in the mind of leading Englishmen interested in Workmen's Compensation, recurs again and again in the literature on the subject and, more recently, in lucid evidence relating to the German system given by Mr. C. M. Knowles, on Sept. 16th 1919, before the Holman Gregory Committee.

Englishmen had only to look over the border to see how backward they were in the provision made for injured workmen. When Lord Campbell, at the instance of Dr. Edwin Chadwick,<sup>1</sup> introduced his Bill in the House of Lords, he explained<sup>2</sup> that

In Scotland and in foreign countries the general rule was that where there was a wrong that worked injuriously to another, the law gave compensation; but in this country, if death ensued, the civil injury merged into felony.

He further said:

Some of his learned friends thought, however, that the law of England was absolute perfection, and that any attempt to infringe upon it should be resisted. He was told that the resistance to this measure, in the other House of Parliament, would be also increased by the influence of railway companies, and that this influence was so great that one railway company alone could muster not less than 80 votes. But though there might be a great many Hon. Gentlemen in the House of Commons proprietors in railway companies, he trusted that when they were directors, they would consider only that they were citizens and subjects, and that, as men it was their duty to give their support to them.

Lord Lyttelton, in agreeing with the Bill, feared that it would be viewed with some anxiety in the lower House. Lord Brougham stressed the fact that

the law of England, was, with regard to compensation for loss of life, an exception to the law of any other country.

On Aug. 21st 1846 Lord Campbell made an emphatic appeal to the Lords to accept the Bill, 'the most important measure that had come before their Lordships since the Corn Laws'.<sup>3</sup> The House of Commons accepted it subject to a minor amendment.<sup>4</sup>

The importance of this first measure in the direction of employers' liability and workmen's compensation lies more in its moral significance than its practical effects, which fell short of expectations. From the preamble, which describes the Act as one 'for compensating the

<sup>1</sup> Cf. Dr. Edwin Chadwick in *Fraser's Magazine*, 'Employers' Liability for Accidents to Workpeople', May 1881, p. 691.

<sup>2</sup> Cf. also *Deodands Abolition Bill and Death by Accident Compensation Bill*, H.L. Apr. 24th 1846. *Hansard*, vol. 85.

<sup>4</sup> 9 & 10 Vic., c. 93.

<sup>3</sup> Cf. *Hansard*, vol. 86, p. 826.

families of persons killed by accidents', it appears that it was designed to remedy an admitted defect in the Common Law, but its main purpose was to obviate the harsh result of the maxim *actio personalis moritur cum persona* in favour of the dependants of any one tortiously killed. It only gave these dependants a remedy where the deceased, had he lived, would have had one. It did not therefore touch, or seek to modify, the 'common employment' difficulty:

The Act itself provided:

1. That an action shall be maintainable against any persons causing death through neglect, &c., notwithstanding the death of the person injured.
2. Only one action shall lie.
3. The plaintiff shall deliver full particulars of person for whose benefit the damages are claimed.
4. Action to be brought for the benefit of certain relations by and in the name of the executor or administrator of the deceased.

The doctrine of common employment<sup>1</sup> was soon applied to Scotland, where Lord Campbell's Act did not apply,<sup>2</sup> as a result of the decision of 1859 in the *Bartonshill Coal Company v. Reid*. In another case, *Wilson v. Merry*, of 1868, the doctrine was extended to injuries caused to a workman by a foreman or persons occupying positions of superintendence in the same employment.<sup>3</sup> Thus, in the case of a locomotive fireman injured through the negligence of his superior, an engineer, the master was not liable.

Similar decisions, confirming and even extending the Common Law doctrine against the workman's interests were *Hutchinson v. The York, Newcastle & Berwick Railway Company* and *Wigmore v. Jay*, both already alluded to (see p. 25). These cases, decided after the passing of Lord Campbell's Act, prevented any substantial improvement of the workman's position in regard to compensation. The Act was held to have created an exception to the rule of the Common Law that, even if the workman was killed tortiously, those dependent upon him had no remedy at Common Law. But the action which the Act of 1846 provided could only be maintained for the benefit of a wife, husband, parent, or child of the deceased, and was even then subject to the condition that a Common Law action by the workman himself must have been maintainable had he lived; so that the same difficulties already indicated as standing against a Common Law action for negligence had to be surmounted to achieve success.

<sup>1</sup> Cf. Howell, loc. cit., pp. 225-6.

<sup>3</sup> Cf. Holman Gregory, *Report*, p. 6.

<sup>2</sup> Cf. Howell, p. 426.

under Lord Campbell's Act.<sup>1</sup> The Act was epoch-making, but it did not touch the master and servant problem.

The first demand for a Compensation Act came, not unnaturally, from miners, and was made at a Miners' Conference in Leeds in 1863. They had taken up the case of *Reid v. The Bartonshill Coal Company* and, when the company appealed to the House of Lords from the Court of Session in Scotland, they supported the case against the appellants, the case being thereafter quoted as *The Bartonshill Coal Company v. Reid*. A Bill to amend Lord Campbell's Act was prepared in 1869 and again in 1870, but it was not until July 17th 1872 that the Bill<sup>2</sup> was presented to Parliament. On Aug. 7th Mr. Chichester Fortescue, on behalf of the government, promised a government measure in the next session, whereupon Mr. Hinde Palmer withdrew his own Bill. Circumstances, however, prevented any further action of the government in the following years. Parliament was a bottleneck and, only too often, not the agent of, but the principal obstacle to, reforms the necessity for which was widely accepted.

The Select Committee, appointed in 1876, and reappointed in 1877, to consider Employers' Liability for injuries to their servants, was mainly concerned with the theory of Common Employment and the legal intricacies involved. The evil of 'contracting out' was already present.<sup>3</sup>

Q. 919. You have heard it stated that it is desirable that the employers should have the power of contracting themselves out of the law with respect to accidents; do you think that it would be a desirable state of things?

A. (Mr. Broadhurst (M.P.), Secretary of the Trades Union Congress Parliamentary Committee.) No. I think not.

Q. 920. Do you think that it would be a very undesirable state of things?

A. A very undesirable.

Mr. George Howell, who was an important witness before this Committee, emphasized that in Prussia contracting out of liability was illegal.<sup>4</sup> Mr. Broadhurst made a strong point against 'free contracts' which were not 'fair'.<sup>5</sup>

When a man . . . is pressed by the necessities of life, and driven to accept conditions, which he would not have otherwise accepted, I do not think this is altogether free or fair.<sup>5</sup>

<sup>1</sup> Holman Gregory, *Report*, p. 6.

<sup>2</sup> It was sponsored by Walter Morrison, Andrew Johnstone, J. Hinde Palmer, and R. S. Wright, by whom it had been redrafted.

<sup>3</sup> Cf. *Report from the Select Committee on Employers' Liability for Injuries to their Servants*, July 21st 1876, Q. 919 and 920.

<sup>4</sup> Cf. *ibid.*, Q. 449.

<sup>5</sup> *Ibid.*, Q. 904.

The question played an important part in subsequent discussions of Workmen's Compensation. The Committee of 1877, which included social reformers such as Mr. Mundella and Mr. Shaw Lefevre, strongly protested against the doctrine of Common Employment, although they pointed to the difficulties.

That a man should be liable for injury occasioned by acts which he has neither done nor permitted, which have resulted from negligence of his, or in disobedience of his order, or which he may have forbidden, is a result the justice of which is not easy to recognise, and one which some eminent lawyers do not hesitate to describe as 'essentially unjust'.<sup>1</sup>

Sometimes the cry for imposing more stringent obligations upon manufacturers found strong expression before Committees dealing with other subjects. So in connexion with a discussion of the effect of noxious gases in alkali works we find the following evidence (*vide* Royal Commission on Noxious Vapours, 1878, C. 2159, p. 148):

Q. 4461. Supposing that he adopted the best process, still the manufacturer might, through the carelessness of his workmen, allow more of these gases to escape; how would you proceed against the manufacturer?

A. (Rev. R. E. Hoopwell, LL.D., F.R.S.A.) I would make him responsible because it is constantly put upon the workmen. It is constantly said that the workmen are so careless that in the case of smoke they will not fire the furnace properly, and that the gas is emitted from the tanks, and so forth. I would make the manufacturer entirely responsible, and he would then get trustworthy workmen.'

Q. 4462. As far as I understand at present, the manufacturer is not very responsible?

A. No.

Q. 4463. You would then advocate an alteration of the law, so as to make the manufacturer responsible?

A. I would.

The view that more care should be expected on the part of the employer if his responsibility was increased could have been well applied to accidents in general, where too, in most cases, the blame was put on the carelessness of the workmen to vindicate the employer. (See also *ibid.*, Q. 3948 sqq.)

Legislation was overdue, but it was not until 1880 that Employers' Liability was at last seriously tackled and the views of 'eminent lawyers' overruled by considerations of public interest. The Parliamentary Committee of the Trades Union Congress (established in 1868) did not act before 1877, when a Bill providing for the total abolition of the doctrine of common employment, prepared by them and presented by Mr. Alexander Macdonald, M.P. for Stafford, was referred to a

<sup>1</sup> Cf. *Report from Select Committee on Employers' Liability for Injuries to their Servants, Report and Minutes of Evidence*, June 25th 1877, p. 111.

Select Committee of the House of Commons under Sir Henry Jackson, M.P. The Committee proposed instead so to amend the law as to make an employer liable for his representative as 'vice-master'. This project was also dropped. In 1879 a Bill was introduced by the government providing that corporate bodies should be held liable for injuries caused to workmen in the employ of such bodies by the negligence of the manager or managers. *The Times* contains frequent references during January and February to this measure, which was claimed by the Amalgamated Society of Railway Servants as their handiwork. It was also sponsored by a voluntary society, organized by a London solicitor, Mr. T. C. Boardman, whose activities were unfavourably criticized by the Trade Union Congress, who feared that the Bill would be whittled down or weakened by the introduction of provisions dealing with compulsory insurance. This Bill was, among others, withdrawn in July,<sup>1</sup> as part of the parliamentary process jocularly known as 'The Slaughter of the Innocents', whereunder governments, towards the end of a session, lightened the legislative cargo by jettisoning those Bills which appeared, from an electoral point of view, the least important. Then, as now, lack of parliamentary time was considered a sufficient reason for postponing any measure that the public interest required, but for which there was no influential demand. Thus did the Mother of Parliaments dallied with one of the most pressing grievances of the English working classes which had arisen in the course of the industrial revolution.

<sup>1</sup> It was reintroduced in 1880 by the Lord Chancellor in the House of Lords, and was referred to a select committee, which never met owing to the dissolution of Parliament.



## PART II

### EMPLOYERS' LIABILITY AND THE BEGINNING OF WORKMEN'S COMPENSATION

'In 1897 . . . the Workmen's Compensation Bill was under discussion as well as the eight-hour day for engineers, so that such matters were forced on the attention of all of us who belonged to the Liberal party. It always seemed to me that these social reforms required more attention than they got.'

ELIZABETH HALDANE, *op. cit.*, p. 105.

#### II. THE FIRST STEP: EMPLOYERS' LIABILITY ACT, 1880

#### III. FROM EMPLOYERS' LIABILITY TO WORKMEN'S COMPENSATION



## CHAPTER II

### THE FIRST STEP: EMPLOYERS' LIABILITY ACT, 1880

'The well-being of workers depends on many things besides their financial circumstances, and the latter depend on many things besides wages. It is impossible to discuss all of them, but some cannot be omitted, and one is the special provision made for this class against misfortune by accident.'

ARTHUR SHADWELL in *Industrial Efficiency*.

THE Employers' Liability Act of 1880 (43 & 44 Vict., c. 42), in which was embodied the first attempt to bring the law on this subject into relation to the needs of industrial life, appears, in the light of later developments, to be a tentative and imperfect piece of legislation. Judge Ruegg, himself a very high authority, is 'not quite sure whether the Employers' Liability Act of 1880 should be regarded as remedial or preferential legislation. That it conferred upon a number of industrial workers of the country a benefit which they had not previously enjoyed cannot be doubted. Whether the Statute itself should be viewed as one creating a benefit, or as one removing a disability, seems to depend upon whether what is known as the 'doctrine of common employment' was a principle of the Common Law, or an invention of the judges. If the first view is accepted, the statute may be regarded as preferential; if the latter as remedial.'<sup>1</sup> This strictly legal view may usefully be compared with that of Mr. Winston Churchill, who thus appraises the Act as a piece of social legislation:

It had not originated in the great departments of the State and was, both in principle and drafting, an amateurish suggestion which might, indeed, sound very plausible and accommodating; but which had not been clearly thought out in a scientific spirit with the advantages of official information.<sup>2</sup>

His verdict is not, as will appear later, based upon a retrospective view of the unsatisfactory working of the Act, but is rather a reflection of that of the (Conservative) Opposition in 1880, who were anxious to secure its extension. Subsequent criticism from the opposite quarter<sup>3</sup> was equally forthright:

The Act did not satisfy employers or employed. There was no wholesomeness in it. Relations between the two parties were embittered. The remedy proved to be little better than the disease.

To endorse these criticisms is not to belittle the work of those pioneers who first forced the general public to realize that the Common

<sup>1</sup> Cf. Ruegg, *Laws regulating, &c.*, loc. cit., p. 134.

<sup>2</sup> W. S. Churchill, *Lord Randolph Churchill*, 1907, pp. 110-11.

<sup>3</sup> Cf. Howell, loc. cit., p. 430.

Law upon the subject was neither sacrosanct nor unassailable, and required revision. They encountered political hostility as well as economic doubts, for party feeling then ran high. When the Bill of 1880 was first introduced Gladstone pleaded in vain that, of all subjects which could be brought before the House, it was the least fit to be used as an instrument of party attack. The circumstances in which it was introduced were unfavourable to dispassionate consideration; a Bill to deal with the subject had figured in the Liberal programme at the General Election of 1880, but was not mentioned in the Queen's Speech of Feb. 5th 1880, before the Dissolution which preceded the General Election. The Queen's Speech on May 20th to the new Parliament, however, foreshadowed, among the chief subjects to be brought to the notice of Parliament, 'as time may permit', a Bill 'for determining on a just principle the liability of employers for accidents sustained by workmen'. It was, in fact, the first measure to be brought forward after the General Election, and, in the absence of an officially prepared measure, Gladstone adopted a Bill already prepared by the Amalgamated Society of Railway Servants and sponsored by Mr. (later Earl) Brassey<sup>1</sup> who, as a large employer with sympathetic feelings to workers, was a recognized authority on social economics. In moving the second reading of the Bill, which, as originally drafted, was to be called the Workmen's Compensation Act, Mr. Dodson commented on its limited scope:

Outside the Bill remained all accidents that were unavoidable or unaccountable and such as were the Act of God. Outside the Bill there remained the vast majority of accidents such as those arising from a workman's own fault and those which were caused to a workman by the fault of another workman equal in rank to himself. . . . The principle of the Bill was the restriction of the defence of common employment, and the effect of the measure would be to bring back the law to what it was understood to be in England till 1837, when the case of *Priestly v. Fowler* was decided.

Another member, Mr. Knowles, pointed to the vast number of accidents; on one railway in the United Kingdom, of 41,000 people employed, 2,376 met with accidents in a single year. Fearing that the Act would lead to litigation on a vast scale, he proposed the introduction of insurance,<sup>2</sup> and was supported by several members.

<sup>1</sup> *The Times*, June 4th 1880 (in leading article).

<sup>2</sup> Cf. Debate of June 3rd 1880. See also *Punch*, 'Essence of Parliament', June 12th 1880: 'In the end, after a long but not unprofitable night's talk, the Bill was read a Second Time without division, and the first step taken to the settlement of an old and irritating question as to which men's demands are very likely excessive, but master's fears are certainly exaggerated. Railway servants, above all, do stand in need of more protection, and more provision in the shape of compensation for families bereft of breadwinners by the working of rules, and arrangements which make risk of life an inevitable condition of employment.'

'The Fourth Party', a conservative quartet represented by Lord Randolph Churchill, Sir Henry Wolff, Mr. Balfour, and Mr. Gorst, who played an active and valuable role, opposed the Bill as not going far enough. The Tory opposition was expected to defend the employers' interests; the Fourth Party whole-heartedly espoused working-class interests, in the true spirit of Lord Beaconsfield, 'the Tory Radical'. They were doubtless subconsciously aware that nothing could embarrass a Liberal government more than Conservative opposition on the grounds that the Bill was insufficiently liberal.

Mr. Winston Churchill writes:<sup>1</sup>

Whenever the subject came before the House the four friends were in their places. There was not a single sitting from which they were absent, or a single clause, which they did not amend, or seek to amend. It is moreover true that many important alterations in the scope and detail of the measure were conceded at their instance and that many of their proposals, though rejected by the Government of 1880, have now become the law of the land. The unforeseen complexity of the measure afforded indefinite scope to their ingenious minds. All sorts of hard cases were propounded to which the Government could find no satisfactory reply. An employer was to be liable for accidents which occurred through his defective plant and stock. Did this include animate as well as inanimate things? They had contemplated in the word 'stock' a stack of timber or bricks which might fall and cause injury through negligent stacking. They were invited now to consider live-stock. Lord Randolph said that a farmer might have a horse which he knew perfectly well had a disease of the foot and was liable to come down at any moment. Would the workman riding home from the plough and injured by the fall be secured compensation under the Bill? 'No', replied the law officers, 'for the disease of the foot would not be due to the negligence of the employer.' 'But suppose', asked Mr. Balfour, 'the employer had thrown down the horse and broken his knees, and that on a subsequent occasion, in consequence of the horse having been thrown down by his carelessness his servant was thrown and broke his arm, what then?' And it then appeared there might be liability.

The spectre of litigation which has continued to haunt those concerned, in whatever capacity, with Workmen's Compensation was early invoked.<sup>2</sup> Mr. (later Sir John) Gorst urged<sup>2</sup> that the Bill should be recommitted on account of its manifold anomalies and inequities, and so redrafted as to inculcate some simple general principle which would govern the rights of all categories of citizens, whether workmen or servants, whether in factories or in private or government employ, whether in or out of doors. His plea fell on deaf ears.<sup>3</sup> One of the promoters of the Employers' Liability Bill was Joseph Chamberlain, then President of the Board of Trade, who

defended the Employers' Liability Bill, as a very modest instalment of justice

<sup>1</sup> Churchill, loc. cit., pp. 111-12.

<sup>2</sup> In third reading on Aug. 18th 1880.

<sup>3</sup> Cf. Churchill, loc. cit., p. 114.

against cries about freedom of contract and about interference with the rights of property, as against charges that his ideas would cripple our depressed trade in face of foreign competition and bring about the ruin of our country. On this particular question of 'life and property'—the question of compensation to labour for casualties suffered in the course of its service, the Radical leader already had in mind the greater system; and he lived to lay down part of its foundations. Borrowing amply and rightly from Bismarck, he will one day inaugurate in Great Britain the spirit of social insurance.<sup>1</sup>

Thirteen years later he took the first decisive steps to place Workmen's Compensation upon a sound legal basis.

Manufacturers, always numerous and influential in the Liberal ranks, were greatly perturbed at the liability to be placed upon them, and they constrained the government to listen to them. The *Economist*, then as now, was lukewarm, holding that relations between employer and workman should be considered as the outcome of individual bargaining, 'labour' being a 'commodity' like any other.

Strenuous objections continue to be made on the part of the employers of labour to the 'Employers' Liability Bill'. Nor is this a thing to be wondered at.<sup>2</sup>

The law had hitherto been 'singularly favourable to employers in England', whereas 'recent German legislation had imposed on railway companies a liability far more stringent than had ever been proposed here'. 'State help' should be refused, and any form of compulsory insurance opposed as an undesirable interference with the 'contract' between the employer and the workman;

it is to be regretted that people are not left or do not choose to be left, to make their contracts for themselves.

*The Statist* was unreservedly hostile<sup>3</sup> and was not willing to forgo any of the advantages filched by lawyers from the Common Law in the interest of employers. No regard was paid to economic changes or to the emergence of new social necessities.

... it is not very easy to defend the law which established the liability of a person, even to the 'outside world', for the negligence of his servant. Common sense would seem to require that if a person employed another to do lawful and reasonable acts, and that person acts negligently, it is the negligent person alone who should be responsible. ... The owner of a coal mine must be careful, because he has so much property at stake, which the slight negligence of any of his hundreds of servants will destroy. It is hardly possible to strengthen in any conceivable case his motives for care by making him liable for the injuries of his servants to each other. At the same time liability will be probably mischievous, because taking away

<sup>1</sup> J. L. Garvin, *The Life of Joseph Chamberlain*, 1932, vol. i, p. 414. Cf. also Elsie E. Gully, Ph.D., *Joseph Chamberlain and English Social Politics*, New York, 1926, *passim*.

<sup>2</sup> July 17th 1880.

<sup>3</sup> Cf. May 29th 1880.

from servants part of the motive they now have for enforcing the discipline of the service in which they are engaged.

No thought was given to the tremendous cumulative toll which the machine age had taken, without regard to the principles involved in the doctrines of *laissez-faire* Liberalism, from the unprotected working classes for nearly a century, leaving them to the charity of their employers, to the tender mercies of doubtful clubs and societies, or to the miseries of destitution. The sacred principle of 'thrift', so often misapplied in relation to the working classes, was invoked to illustrate the perils of employers' liability.

The community will also suffer, we think, by the discouragement of thrift habits among workmen involved in the proposed law. . . . Workmen, in dangerous employment at least, should insure against accidents, and their doing so would be a beginning of thrift. But they will have no motive to begin if employers are to be liable as proposed.<sup>1</sup>

But public support for the reformers came from the judiciary. *The Times* of Aug. 24th 1880 printed a letter from Lord Shand, a Lord of Appeal, offering 'some observations in support of the view that a system of compulsory insurance by the mutual contribution of masters and men is the just and true remedy for the results of trade accidents'. His letter is of such importance and so admirably illustrates the new judicial temper of the courts that we reproduce it in full.

The evil at present existing, and for which legislation is required, is that when trade accidents occur the sufferers, and, in case of death, their families, are left unprovided for. The result is an appeal to the charitable and, as this only partially meets the object, the sufferers or their families become burdens on the rates.

What is the remedy for this? One answer is—Make the employer responsible always, or, at least, in a certain limited class of cases, and let him make provision as best he may to meet all casualties. The view which I take, and which would at once provide what I think is the natural and reasonable remedy, is that those engaged in occupations attended with peril—employers and employed—should be required to unite in extending the system already so largely resorted to voluntarily, by making the requisite provision through friendly societies.

The Government Bill proposes to put responsibility on employers in a limited but large class of cases, leaving them to provide by insurance in some public company, or otherwise for the risks. There are serious—as I think, fatal—objections to this:—(1) There is, as I have already attempted to show, no sound reason or principle for imposing on employers, as part of the contract of service, an undertaking to guarantee the workman against the fault of any others in the service, assuming these others to have been fit and proper persons for their duties, and the responsibility of choosing such persons admittedly now rests on the employer, who is himself guilty of fault if he fail in this duty.

<sup>1</sup> *The Statist*, loc. cit. This view was widely held by Liberal industrialists, vide *Top Sawyer. A Biography of David Davies* by Ivor Thomas, 1938, p. 226.

(2) If the Bill became law to-morrow, the employer may stipulate that he shall not be liable to the new responsibility imposed by this change, and if he does so, the statute fails in making the provision wanted for accidents.

(3) In any case, and even if no special contracts were made, while the Bill is calculated to raise ill-feeling on the part of employers who regard its provisions as unjust to them, it provides for not more than one accident out of five. In the remaining four-fifths of such occurrences, including accidents from the momentary thoughtlessness or rashness of the unhappy sufferers themselves, the unfortunate servant is left with nothing between him and an appeal to charity or resort to the poor-rates. It is, indeed, one of the obvious consequences of the Bill that the increase of the employer's responsibility will lead him in many cases to withdraw from contracting to any joint fund to meet all classes of painful accidents in his business.

Again, if the alternative of holding the employer liable in all cases (excepting, of course, where the workman is himself to blame) were adopted, as proposed in the Bill of the member for Stafford, the objection first and second above stated, would apply in a much stronger degree. It seems impossible on sound principle to justify a law which would make an employer responsible for the results of an explosion caused by a miner, in direct defiance of the employer's rules, lighting his pipe in his working place in a dangerous mine; and any enactment imposing liability for such an act would be regarded as causing great injustice, would give rise to ill-feeling between employers and employed, and would induce many men of capital to retire from a business attended with such risks—unless, indeed, by special contracts they counteracted the evils of such legislation. And, even in this case, accidents resulting from momentary forgetfulness or rashness would be unprovided for, and certainly the employer, with responsibilities so enlarged, could not be expected to help in providing for accidents of that class.

The injustice and difficulties arising from either course of legislation would be avoided, and a complete remedy would be supplied for the evils now existing, by leaving the law of liability as it now stands, but providing by statute for a compulsory system of insurance. For every accident, including those caused by the thoughtless act of the sufferer, a fund would be at once available. The employer would be saved from the ruin which might overtake him by one serious occurrence, and the workman would have a remedy at hand without recourse to charity or the rates.

Insurance against accidents, as experience shows, with such a cheap and watchful management as the workmen themselves provide in their friendly societies, can be secured for a very trifling sum, not exceeding, even in trades attended with the highest risks, 3*d.* a week contributed by the workman, with equal contributions by the master,<sup>1</sup> and a much smaller sum in such trades as those of builders and the like; and accidents of every kind may be thus provided for, including that class, larger than any other, in which the sufferer is not free from blame, of which the cases of shunters and miners failing timeously to prop the roofs of their working places are the most frequent examples.

<sup>1</sup> Mr. F. G. P. Neisson, a leading actuary, in *The Times* of Aug. 28th 1880 stated that the premium per £100 per miner killed was 4*s.* 7*½d.* per insured person. This allowed for 8*s.* per week disablement pay and 5*s.* 4*d.* per week for temporary disablement.

The objections mainly urged against this proposal, which, it must be conceded, would certainly give a complete remedy, are these—that a statute of the kind suggested would introduce paternal legislation, which is to be avoided; that if insurance were thus made universal employers would become lax in providing the means of prevention of accidents; and that the scheme is impracticable.

In such a communication as the present I can only briefly notice these objections. I concede that they have a certain force; but there is, I think, a good answer to all of them. The object to be gained is of paramount importance, and no other way has ever been suggested of providing for all trade accidents. It would, no doubt, be better if the object could be attained by voluntary effort and arrangement. A great deal has been done in this direction, as is well known to many who have taken an interest in the subject. Still, so clamant is the distress now so often caused, that a case for State interference, even if it be of the nature of paternal legislation, exists. The consequences of serious trade accidents, which always cause great pecuniary distress and often suddenly create a charge of very large amount on the rates of a particular parish or district, are so striking and unusual as to warrant and call for an exceptional remedy. State interference is a matter of daily occurrence for the prevention of accidents, of which the careful provisions of our statutes in regard to the requirements of mines and the fencing of machinery are common examples. It is but a step further, loudly called for by daily occurrences, that legislation should require a provision for the consequences of accidents, as well as for the prevention of accidents. This is all the more clear that no other course that has been suggested will meet the evil, and because the general ratepayer is well entitled to say that in perilous trades, attended with many inevitable accidents, the peculiar risks should be borne by those engaged in the trade, and so ultimately be a charge on the consumer, and not by the ratepayer.

That employers, if protected by insurance, provided by mutual payments with their workmen, would become careless about their workmen's lives I do not believe, any more than I believe that workmen would be careless of their lives and limbs because they knew they were insured. The proper and direct mode of securing care by an employer is the enforcement of those State regulations with which we are familiar in the case of mines and factories, which are enforced under the care and supervision of Government inspectors, and which are daily with matured experience, being made more stringent and comprehensive. An employer has the strongest possible motive to use all care in his business in the fact that in many accidents he suffers severely in his plant and machinery; and it is an unjust aspersion on employers as a class to suppose that they are not solicitous to provide for the safety of their workmen.

Is, then, a scheme of compulsory insurance impracticable? I concede it presents difficulties, but I see no reason whatever to believe that these cannot be met and overcome. The system actually exists in the Rhenish provinces of Germany, to a certain extent, under the control of the Government Mining Department, and has done so since June, 1865. One great difficulty is obviated, because a very large and important section of employers are ready to aid in introducing and maturing the measure; and it must not be lost sight of that in almost every branch of perilous trade throughout the country there are now district

friendly societies, a great many of which have accident funds to which the employers contribute. This existing organization could with great advantage be made available, for the workmen themselves can supply the cheapest management and the best means of investigating and settling claims on the common fund. The contributions of employers to such a fund create a bond of union between them and their workmen, which tends to make the relations between them pleasant and agreeable, and the preservation of feelings thus created is of no small moment. Contributions in this way by the employer must be a much less serious burden than payments to any insurance company whose business is carried on for profit. There would then be no difficulty that cannot be met with care and deliberation in the carrying out of a statute by which those in perilous trades, masters and men, should be required, as a condition of carrying on their business, to provide for the occurrence of accidents; and the same inspectors who now see to the prevention of accidents might, with an addition to their number, undertake this additional duty.

It is said by some, that workmen as a body, would object to legislation of this kind; but workmen in the end are not unreasonable, and as the proposal is itself reasonable, is attended with great advantages to them, and is the only scheme that will cover all accidents, it may be anticipated that they would ultimately co-operate in carrying the measure.

Lord Shand was, however, far in advance of public opinion; few employers or trades unions were willing to consider this solution.<sup>1</sup> The Bill was read a third time in the Commons, and went to the Lords, where state insurance was again advocated, but was strongly opposed by Lord Selborne who, as Lord Chancellor, sponsored the Bill in the House of Lords. 'It was said by some,' so he declared<sup>2</sup> when the Bill was read a second time,

that the Bill ought to have dealt with this subject by way of insurance . . . but the masters might, under this Bill, insure against their liability, and the workmen would continue to insure against those numerous accidents which the Bill would not cover . . . there could be nothing more unwise than to attempt to deal with insurance in a compulsory way by legislation.

But he rejected the idea of extreme individualism reflected in *The Statist* of those days:

It was said, that a motive of carefulness on the part of the workmen would be removed. Their Lordships would not really believe that men would purposely endanger their lives and their limbs in order to get compensation under the Bill.

He mentioned that the industries of France and Belgium were prospering 'though their laws in that respect were more stringent than anything here proposed'. The aged Lord Shaftesbury—the life-long Conservative

<sup>1</sup> The Secretary of the Farm Labourers' Union supported it (*The Times*, Aug. 20th 1880).

<sup>2</sup> Cf. *Debate H.L.* 1880, vol. 255, pp. 1971-2.

—backed the Bill as 'one step towards a reconciliation of the sad feud between capital and labour' (*The Times*, Aug. 28th 1880). Lord Bra-bourne, as a Liberal, represented the other point of view.<sup>1</sup> The law would promote carelessness on the part of the worker: 'A man will say: "If I am injured I am sure to get something handsome."' Such being the outlook of the nation's leaders, it is not surprising that the Bill of 1880 was restricted in scope. To later generations it appears inadequate: to most of those before whom it came it seemed nothing short of revolutionary.

The main provisions of the Employers' Liability Act of 1880 were, and still are,<sup>2</sup> that it gives to an injured workman the right to damages when an accident is caused in the following circumstances:

1. By some defect in the ways, works, machinery, or plant connected with or used in the employer's business.
2. By negligence of a fellow servant exercising the duties of a superintendent.
3. By a workman's obedience to orders or directions issued negligently by a fellow servant whom he was obliged to obey.
4. By the act or omission of a fellow servant in obedience to rules by laws or particular instructions.
5. By the negligence of a fellow servant who had charge or control of any signal points, locomotive engine or train upon a railway.

The Act applied to all engaged in manual work, but not to seamen or domestic servants. Damages recoverable under this Act take the form not of weekly payments, but of a lump sum limited, in cases of death, to a maximum of three years' earnings. There is no limit of £300 as under the Workmen's Compensation Act. Notice of the accident must be given within six weeks and an action for damages must be taken within six months. Provision for dependants was also made. Lord Campbell's Act of 1846 had made it possible for dependants of a workman killed in the course of employment to sue the employer for 'loss of benefit' as if the workman were alive, provided that they could prove 'dependency'. But the dependants had to prove that the accident was due solely to the negligence of the employer who, if they succeeded, could still plead all the defences open to him if the result of the accident had not been death. Under the Employers' Liability Act of 1880 the dependants of a workman may recover damages under that Act and Lord Campbell's Act of 1846. The defences of *Volenti non fit injuria*<sup>3</sup> and of contributory negligence may

<sup>1</sup> Cf. *Debates*, loc. cit., p. 1985; cf. also p. 1992.

<sup>2</sup> Cf. J. L. Cohen, loc. cit., pp. 89-90.

<sup>3</sup> This defence does not apply to a breach of statutory regulations under the Factories Acts. Nor does Common Employment (see *Baddely v. East Granville*, 19 Q.B.D. 423, and *Wheeler v. New Merton Board Mills*, [1933] 2 V.B. 669).

be raised by the employer, but in practice these have proved very difficult to establish.

The position of injured workmen and of the defendants of those who met with fatal accidents now appeared more hopeful than before, but the worst fears of the critics of the Bill were soon confirmed.<sup>1</sup> The legal rights of the injured workmen were ill defined and susceptible of different legal interpretations, of which those who advised employers were not slow to take advantage. The stream of litigation soon undercut the pillars of the law. In all cases enumerated above, it is provided that the employer shall not be liable, if it can be shown that the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer or some person superior to himself in the service of the employer; unless he was aware that the employer or such superior already knew of the said defect or negligence.

It was inevitable that these provisions should call for judicial interpretation. Where general words are used, borderline cases are inevitable. Thus the courts have been called upon to determine, among many other matters,<sup>1</sup> the exact meaning of 'way', 'work', 'machinery', 'plant', and to say what is precisely meant by a 'defect' in the condition of each of them. They have to say what is included in 'railway' and in 'train', what is meant by having 'charge' or 'control', and to what extent a man's principal duty is 'superintendence'. Similar difficulties existed in regard to the amount of compensation to be paid and the respective proceedings. The amount of compensation is not left for a jury to determine, but is limited to an amount not exceeding such sum as may be found to be equivalent to the estimated earnings of a workman in the same grade as the injured person during three years preceding the injury. The right to recover is hedged about with technicalities unknown to the Common Law. Proceedings must be taken in the county court, within a strictly limited time, and are maintainable only if certain specific provisions as to notice of injury have been complied with.

The effect of all these conditions was that proof of negligence was difficult to establish under the Act, and the costs of an action thereunder were considerable. It was soon clear that it did not provide a satisfactory means of obtaining compensation for injury or death from industrial accidents. Its value was further impaired, if not entirely destroyed, in the eyes of those whom it was intended to benefit, by the decision in *Griffiths v. Earl of Dudley* (9 Q.B.D. 357, 1882), where

<sup>1</sup> The Rt. Hon. T. Johnston, P.C., M.P., *The History of the Working Classes in Scotland*, 3rd Ed., 1929, pp. 286, 289.

<sup>2</sup> Cf. *Enc. Brit.*, 'Employers' Liability, 1911, vol. ix, p. 358.

the Queen's Bench declared it legal for a workman to 'contract out of the Act' with his employer by covenanting not to claim compensation for personal injuries under the Employers' Liability Act.<sup>1</sup> This fresh instance of 'judge-made law' was much resented by trade unionists, but it was not until 1893 that the demands for its abolition were embodied in a government Bill, which, however, did not become law, so little was Parliament concerned with the real grievances of labour, whether organized or not. The Committee on Compensation for Workmen of 1904, referring to the Employers' Liability Act of 1880, observes that it was never extensively operated.

Compared with the number of accidents, the number of actions brought was exceedingly small, and in a large proportion of them the workman failed. Regarded, therefore, as a means of obtaining compensation for injury with a reasonable degree of certainty, the Employers' Liability Act of 1880 must be considered to have been a failure.<sup>2</sup>

Arthur Shadwell notes that, in a large iron and steel works 'representative of works of the kind in which accidents are frequent and severe',<sup>3</sup> the compensation previously paid under the Act of 1880 averaged £75 a year, whilst that under the Workmen's Compensation Act of 1897 was as much as £3,700.

If workmen complained, employers appeared equally dissatisfied. Their legal liability was uncertain. The danger of lawsuits and adverse verdicts, though less calamitous than to the employee, was serious, particularly to small employers, and the costs in any event were heavy. The liability system affected the spirit of the factory and engendered friction and irritation. The harsh treatment of one injured workman might cause trouble with his union and disaffection throughout the factory. On the other hand, the Act was an incentive to employers to fence machinery and generally to enforce safety conditions in their factories and workshops. That it was welcomed by Factory Inspectors is shown by the following reference to the Act in the report for 1881 of the Chief Inspector:

The passing of the Employers' Liability Act has certainly assisted us in administering that part of the Factory Act that requires that machinery shall be securely fenced and I find the occupiers of factories and workshops now more ready than in former years to accede to any suggestions as to guarding of dangerous places.

As a first attack upon a peculiarly English conception of the workman's responsibility, the Act of 1880 does credit to its framers. To have attempted to enforce compulsory and general protection for workmen would probably have been fatal to the whole Bill. Much of

<sup>1</sup> Cf. Holman Gregory, *Report*, p. 6.

<sup>2</sup> Cf. *Report on Workmen's Compensation*, 1904, p. 11.

<sup>3</sup> Cf. loc. cit., p. 91.

the litigation which it entailed was probably inevitable whatever form of words be used, and is, perhaps, inherent in the system itself (see p. 143). The Act is still in force; cases taken to court thereunder were 583 in 1907, but only 31 per annum in the years 1926-1935,<sup>1</sup> while the number of cases under the Workmen's Compensation Acts in Great Britain taken to the courts for the same period averaged 6,061 annually, and the total number of original claims for compensation finally settled with the cognizance of the courts 2,067 (1936).

The Employers' Liability Act of 1880 has been suffered to remain on the Statute Book side by side with the Workmen's Compensation Act, because, though defective in many respects, it occasionally affords better protection to the injured person than the Compensation Acts. The Holman Gregory Committee had no illusions as to its value to injured workmen. It is a legal commonplace that 'an Employer's Liability case is always a difficult case to prove',<sup>2</sup> and the spokesman of the Corporation of Insurance Brokers told the Committee that:<sup>3</sup>

In the experience of the Corporation the Employers' Liability Act, 1880, has become very out of date, and little or not used at all by injured people. They rely on the Workmen's Compensation Act or upon the Common Law. On the other hand it frequently causes delay and litigation, and, if I may say so with all deference to the legal profession in the investigation of serious cases, to see if they can bring it under the Employers' Liability Act—litigation which leads to no good result except the spending of money. There is a catastrophe. We know from our own experience that a delay of three months has occurred in dealing with a claim, the jury at the inquest said it was purely accidental; the question was carefully gone into as to whether there was a defect in the machinery and plant, and the coroner's jury found there was none, and gave the verdict accordingly, and yet three months afterwards the wretched dependants have not received, other than charity, a penny piece of compensation.

This statement, which was not challenged in examination by the Committee, ignores the existence of the alternative claim by the workman that there had been a breach of statutory regulations by the employer, in which case a claim for damages would lie under the Common Law.

Failure under the Act of 1880 does not, however, estop an injured workman from suing under the Workmen's Compensation Acts for the lesser sums which might be awarded to him thereunder.<sup>4</sup> Mr. Lowe gave another explanation:

<sup>1</sup> Cf. Home Office, *Workmen's Compensation Statistics* (hereafter quoted as *W.M.C. Statistics* with respective date), 1938, p. 14.

<sup>2</sup> Cf. Holman Gregory Report, minutes A. 9512, Evidence of Mr. A. L. Lowe, C.B.E.

<sup>3</sup> Cf. *ibid.*, A. 16231, Evidence of Mr. A. H. Riseley.

<sup>4</sup> Cf. *ibid.*, A. 10504, Evidence of Judge Ruegg.

Q. 9514. You have found cases in which a workman has been badly advised to go under the Employers' Liability Act instead of the Workman's Compensation Act?

A. Yes.

Q. 9515. Is one of the reasons because the costs are more substantial under the Act of 1880?

A. I do not think so.

Q. 9516. Why are they brought under the 1880 Act?

A. Because in one case they can only get a lump sum; in the other they can only get an award.

But lump sum awards under the Act of 1880 against an uninsured employer may not be recoverable owing to the bankruptcy of the defendant.<sup>1</sup> Mr. James Sexton, appearing for the Trade Union Congress before the Holman Gregory Committee, complained that the W.C. Acts had, in practice, superseded the Employers' Liability Act. Workmen were persuaded by insurance agents to settle thereunder claims to which the Employers' Liability Act was applicable.

Sometimes their touts go to the hospital and visit the man when he is in bed with a broken limb, and they prey upon the ignorance of the man as to the law . . . where it would be a good case under the Employer's Liability Act.<sup>2</sup>

Mr. W. A. Appleton, C.B.E., Secretary of the General Federation of Trade Unions, attached importance to the retention of the Act.

I do not want to interfere with the Employers' Liability Act. There would be only very rare cases, but where it can be proved that the employer was wilfully negligent, I want that to remain.<sup>3</sup>

Judge Ruegg took the same view, and expressly desired its retention:

Q. 10263. As regards the Employers' Liability Act, do you favour that remedy remaining on the Statute Book?

A. Yes, I do. It is very rarely resorted to now, but in some cases it is useful and right, I think, and I am not sure that it does not act as some deterrent to masters—small masters generally—whose plant and machinery is unsatisfactory.<sup>4</sup>

It is a very technical Act, and very difficult to succeed under,<sup>5</sup>

but by no means 'a dead letter', and a workman successful under the Act might 'obtain a more substantial sum'.<sup>6</sup> Mr. John Johnstone,

<sup>1</sup> The Holman Gregory Committee (Q. 10602) were told of a case in 1918 under the Employers' Liability Act in which the sum of £200 was awarded to an infant, but only £17 paid as the uninsured employer became bankrupt. A claim under the W.C. Acts might have produced a larger total sum. Cf. loc. cit.

<sup>2</sup> A. 3858.

<sup>3</sup> A. 3818.

<sup>4</sup> Cf. also Q. 10395.

<sup>5</sup> Cf. A. 10506.

<sup>6</sup> Cf. Q. 10501 and 10504.

General Manager and Secretary of the Scottish Mine-owners' Defence and Mutual Insurance Association, took the opposite view.

We shall be only too glad to see the Common Law and the Employers' Liability eliminated altogether.<sup>1</sup>

He complained that workmen were persuaded by 'certain firms of solicitors' to proceed under these conditions instead of accepting Workmen's Compensation:

we have no doubt that the main reason for giving this advice is in order that they may make substantial expenses for themselves.<sup>2</sup>

The Holman Gregory Committee did not attempt to pronounce judgement upon this clear-cut issue between rival interests and procedures, but it is apparent from their Report and from the available evidence that in spite of its defects, the Act of 1880 cannot yet be regarded as redundant. Its deficiencies were quickly recognized. That successive governments and parliaments should have been so slow to repair them, during a period in which the working population and industrial hazards were increasing so rapidly, is one of the curiosities of our social history. 'Social reformers', such as Sir Charles Dilke, in later years advocated the extension of these Acts to all out-workers and to all trades, on a universal and compulsory basis,<sup>3</sup> but few of them were in sufficiently close personal touch with the injured workmen, over a period of years, to realize how great was the need for reform, whilst public opinion outside the larger unions was not awake to the necessities of the case and would not have supported drastic changes. But the tide rose, though slowly, and the next decade witnessed fresh advances.

<sup>1</sup> A. 6180.

<sup>2</sup> But see Mr. A. L. Lowe's evidence *supra* to the opposite effect.

<sup>3</sup> Tuckwell, *Life of Sir C. Dilke*, vol. ii, p. 352.

## CHAPTER III

### FROM EMPLOYERS' LIABILITY TO WORKMEN'S COMPENSATION

'... no amendment of the Law relating to Employers' Liability will be final or satisfactory which does not provide compensation to workmen for all injuries sustained in the ordinary course of their employment and not caused by their own acts or defaults.'

JOSEPH CHAMBERLAIN, House of Commons, Feb. 20th 1893.

'... Those that can pity, here may, if they think it well, let fall a tear; The subject will deserve it.'

SHAKESPEARE, *Henry VIII*, Prologue.

SO soon as the Employers' Liability Act of 1880 was tested in the County Courts its defects became evident; public resentment grew as the years passed and, by the middle of the nineties, it had become an important political issue. Mr. Asquith, as Home Secretary, stated<sup>1</sup> in 1893 that the annual sum actually receivable by plaintiffs under the Act in the form of damages paid through the Courts of Justice did not exceed £8,000. This figure was exclusive of private arrangements, but sufficed to show how small were the advantages and how limited the rights secured thereunder, at the cost of a vast amount of litigation, to the workman.

Experience, moreover, showed that whether the injured workman recovered damages or not, he lost his employment if and when he pressed his suit, even if his disability was but temporary. Only one case in eight was reported; few claims were paid and, in comparison with the actual need, the total compensation disbursed was negligible. Sir Edwin Chadwick fired the first shot with a pungent article in *Fraser's Magazine* for May 1881. He quoted from a pamphlet issued by Lord Justice Bramwell, in which he asked the question, 'What good will the new law do?' and answered it by replying: 'The only thing I have ever heard suggested is that it will make the master more careful in the choice of his servants.... But is it just or reasonable that for this small advantage, good masters should be liable to the extent intended?....' This extent Lord Justice Bramwell proceeded to exaggerate, concluding that the law would do no good, since the compensation would ultimately be paid out of wages.

Lord Justice Bramwell reminded his readers that he was a member of the Commission of Inquiry into the Employment of Children in Factories appointed in 1833, and that he himself drafted the legislation which followed upon their Report. The liability of wage-earners

<sup>1</sup> *H.C. Debates*, Feb. 20th 1893.

to accidents in some mills was very large; owners declared them to be inevitable, or the result of the workers' carelessness. 'If so,' replied Sir Edwin, 'the costs of the accidents, and of the resultant widowhood and orphanage are a necessary consequence of your business and should be borne by the trade and, ultimately, by the consumer, and not by parish rates on which they are so heavy a burden.' Even in coal-mines the additional cost of proper compensation would not exceed a half-penny a ton, and so long ago as 1859 it had been his view and that of many others that the industry should bear the whole cost. He did not favour the Bismarckian system of full governmental insurance, as it was likely to weaken the personal responsibility of employers and managers unless, as in Prussia, it was mitigated by very efficient executive administration. There must be a union of interest with duty, such as was attained when shippers were paid so much per head for emigrants landed alive in Australia, instead of for those embarked—a change which revolutionized conditions on emigrant ships and reduced deaths on travels, which had been very numerous, to a negligible figure. The mechanization of industry, and the invention of coal-cutting machines, made it necessary for employers to select employees more carefully—to that extent he agreed with Lord Justice Bramwell. It was equally true in agriculture, where steam-power was coming into use, and in the use of the steam-navvy. Machines tended to raise wages. The reduction of liability for accidents would retard progress: liability would advance it. Full insurance against all risks was in general objectionable; the outcries against mutual or self-assurance generally came from incompetent directorates. *Culibet arte sua credendum est* was not, in his experience, applicable to British industry. The Employers' Liability Act (which was limited to seven years) was good; it would save many, perhaps three thousand, lives every year. It should be strengthened, not dropped; extended, not restricted.

A Select Committee, appointed by Parliament to consider whether and, if so, what amendments to the 1880 Act were required, had reported in 1886,<sup>1</sup> somewhat euphemistically, that:

A general concurrence of opinion was expressed as to the advantages which the workmen had derived from the existing Act. The apprehensions as to its possible results in provoking litigation and imposing heavy charges upon employers have proved groundless, while a useful stimulus has been given to the establishment of provident funds and associations, in many cases liberally supported by the employers.

The Report as a whole was a eulogy on employers, and only recommended minor amendments; the workmen's point of view was hardly

<sup>1</sup> Cf. *Report of Select Committee on the Employers' Liability Act (1880)*, June 11th 1886. The Chairman was Sir Thomas (later Earl) Brassey.

considered. The favourable opinions expressed by the Committee were for the most part contradicted by the whole trend of subsequent legislation. But, if employers at that period were unenlightened, the same is true of labour organizations, whose attitude unquestionably retarded progressive measures.

The building trades with other trades of the country for many years [declared a Trade Union Secretary<sup>1</sup>] gave their time and many thousands of pounds in money to carry forward the agitation to obtain an Employers' Liability Act. The workmen throughout the country were animated by the sole desire of bringing home to employers the personal responsibility of their conduct in carrying their works. The workmen never cared for compensation itself, it might have been a necessity of their social circumstances, but no idea of compensation ever urged them forward to agitate for the obtaining of this Act; it was primarily, I may say absolutely, with the desire to protect their lives and limbs so far as human precautions could do, and the feeling which they have had all along is that neither insurance nor compensation as they may be in themselves, will ever meet their position unless the personal responsibility rests upon the employer.<sup>2</sup>

The general current of legislative endeavour in Great Britain was thus diverted from any serious discussion of insurance, whether voluntary or compulsory, and whether wholly or partly to be borne by employers, and public attention was focused upon financial compensation to the injured man. No money, it was argued, could compensate a man for a lifelong disability, or console a family for the loss of their protector and breadwinner; but this argument did nothing to help the injured workmen, and in practice militated against the adoption of reforms which experience already showed to be necessary. The possibility that, as in Germany, accident prevention and workmen's compensation could go hand in hand was ignored. Much was said of the insufficiency of the sums payable as compensation to the workman; the fact that, owing to the absence of any system of insurance, many got nothing at all was ignored. The attitude then adopted by labour organizations towards insurance by employers against their liability to pay compensation, and therefore against compulsory workmen's compensation insurance, and the insistence of trade union representatives that responsibility should rest exclusively upon employers, has never been entirely abandoned. In the course of a debate on Workmen's Compensation in 1925,<sup>3</sup> Mr. Charleton declared:

We talk a good deal about compensation, but it is not compensation that we are really after—it is security that we seek.

<sup>1</sup> Mr. G. Shipton, Sec. Amalg. Soc. of House Decorators, Q. 386 and A.

<sup>2</sup> 'The great question with the working men is, after all, not compensation, but protection.' Anonymous writer in the *Westminster Review*, Jan.–June 1889, p. 500.

<sup>3</sup> Cf. *Parl. Debates H.C.*, Feb. 27th 1925.

Mr. A. D. Provand (see p. 63), a well-known authority on social legislation, criticizing<sup>1</sup> the trade unions' thesis that 'there should be nothing in the Act to encourage employers to insure risks', gave at length his reasons for considering their attitude to be 'inexplicable' and contrary to the interests of the workmen themselves. Employers, he explained, did not escape liability by insurance, and there was no ground for the belief that insurance would relieve employers from responsibility or increase the number of accidents.

Such arguments had no effect; trade union leaders had the field to themselves. Conservative members of Parliament and employers with progressive views were sincere in their advocacy of insurance in the interests of workmen, but seem to have made little or no attempt to propagate their views. Social legislation was not yet a political issue of importance.

Dissatisfaction with the Act continued to grow in volume and, in 1888, the government introduced a Bill which, besides providing that employers should compensate the injured workmen, introduced an entirely new principle, viz. that workmen should insure themselves against accident. All the forces of the trade unions and friendly societies were united in indignant opposition to this part of the Bill, preferring to lose the whole rather than to accept the insurance scheme which, against their wishes, was included in it. The government withdrew the Bill, declaring their intention to reintroduce it in 1889, but it never saw the light.

The opposition to compulsory insurance contained in clauses 3 and 4 of the Bill arose from the fact that the system of contracting out had been grossly abused, some employers, indeed, holding that the mere fact of giving employment to a man out of work was a sufficient consideration, on their side, in a contract to set aside the law.<sup>2</sup> Many insurance societies were created with the sole object of providing employers with an excuse for at least a partial evasion of the Act. It was generally admitted that miners and railway servants had been coerced into declining the benefits of the Act and accepting a mutual insurance scheme which, at best, was far from a just equivalent.

The finances of the various provident societies already existing were, for the most part, far from satisfactory. The position is thus described by an anonymous contemporary writer:<sup>2</sup>

Taking the best first we find of 527,000 miners 236,000 are insured against accidents in their nine special societies, one in each of the coal fields of Great Britain. . . . The premiums paid and benefits offered vary slightly but average as

<sup>1</sup> *The Nineteenth Century*, Nov. 1883, pp. 705-7.

<sup>2</sup> *The Westminster Review*, Anon., 'The Employers' Liability Bill', May 1889, pp. 495 sqq.

follows. For from 2*d.* to 4*d.* a week the miner is assured 8*s.* a week during disablement and, in case of permanent injury, a lump sum of £5 increased to £22 if he has neither wife nor children to become chargeable to the funds. Widows receive 5*s.* a week during widowhood, children 2*s.* to 2*s.* 6*d.* a week till 10 or in some cases 13 years of age. Employment subsidies vary from 3·9 per cent. in the Midland Counties to 25·2 per cent. in North Wales: the average for the whole country was 13 per cent. or £22,218, in return for which 90,562 workmen contracted to forego all their rights under the Act of 1880 and to trust to their societies, mainly supported by their own money, to compensate them for any injury they might receive.

The four largest of the miners' societies had an accumulated deficiency of £159,400, and an accruing deficiency of £22,500 a year. The railway societies were no better, and the information available regarding societies connected with other trades was not reassuring.

The anonymous author claimed that the Bill would fetter an evil system on to the necks of employees, and would lead to a mushroom growth of mutual insurance societies. The system proposed therein was compared with that of Germany, where the State supervised the funds, to which the employer paid 50 per cent., but the idea that such a system should be introduced into this country was warmly challenged. It would turn out to be a yoke grievous to be borne.

There are too many people, amongst whom are some members of the present Government, who with the best intentions towards the working classes are still profoundly ignorant of their real necessities. It is amongst these that the various schemes for a system of national insurance have found favour. It may be suitable for German working men to have a certain contribution compulsorily deducted from their wages and saved for them by the State, but the working men of England have proved years ago that they do not need this grandmotherly care.

The writer of these heroics admitted that 'limited membership, faulty management, and mistaken financial principles, had caused rottenness and brought ruin' to many friendly societies, that the loss to the working classes had been very severe, the discouragement to thrift great; but, he claimed, both were disappearing. 'A workman does not require the assistance of his employer in supplying himself with a provision for sickness and death.'

The great question with the working man is, after all, not compensation but protection. They look at the law from the point of view, not of pockets, but of the life and limb of the workman. No money will really repay a man for a life-long injury, or console widows and orphans. The only means to avoid negligence in providing the necessary safeguards for workmen is to impose a pecuniary fine on employers if such negligence is proved.

Such were, no doubt, the views of a majority of Liberals in the eighties, and it is not surprising that the Bill was not introduced in the following

year as was promised and intended by the government. But dissatisfaction with the Act and, in particular, with the litigation to which it gave rise became so patent that both political parties accepted the necessity for fresh legislation.

The Liberal government attempted in 1893 to find a remedy by a 'fundamental change in the law', a step the 'boldness or importance' of which could 'hardly be over-rated'; but, contrary to expectation, it did not assume legislative shape until 1897. Once again the Bill followed in general the German precedent, which required employers in certain trades to provide, by means of compulsory insurance, adequate security for compensation to persons injured by accidents arising out of their occupation.

This legislation, dating from 1884, had already exercised a profound influence upon the social legislation of almost every country in Europe, but compulsory insurance was not thought suitable to Great Britain, though it was commended by persons whose views should have perhaps commanded respect. Canon Blackley's tentative scheme of national sick and old age pensions insurance, made in 1878,<sup>1</sup> was ridiculed as 'compulsory providence' by such writers as W. Walter Edwards and condemned as destructive of thrift and self-reliance. A Bill on the subject, introduced into the House of Lords on June 4th 1880, received no support and was ridiculed in the press. 'The theory of compulsion . . . has many charms for . . . amateur economists.'<sup>2</sup> Tremenhere, to whose profound insight, derived from factory inspection at home and from social legislation abroad, we have already referred, was one of the very few who did not contemplate such problems from the angle of ethical or economic theory but of human suffering. He thus concluded a reply to Mr. Edwards:

The great object in view of any scheme of the kind is, that the thrifty should be relieved from the burden of paying for the reckless.<sup>3</sup>

Applied to Workmen's Compensation this meant that a general scheme of compulsory insurance under State administration would relieve the community from the omissions of careless employers who were not willing to insure and, by increasing the total volume of insured, would reduce the cost of such insurance for the mass of workers.

Other means had to be devised, and it was proposed that employers should be made personally liable to pay compensation for this class of accidental injury. The proposal was a startling innovation, for the law had never recognized a personal liability except as a consequence of breach of contract or some wrongful act or omission. As regards the

<sup>1</sup> Cf. for details Wilson and Levy, *Industrial Assurance*, pp. 68-9.

<sup>2</sup> *Nineteenth Century*, Nov. 1879, p. 894.

<sup>3</sup> *Ibid.*, Aug. 1880, p. 293.

injuries caused by other fellow workers, judge-made law had yet further limited the possibility of compensation by the invention of the defence of Common Employment<sup>1</sup> which it was now proposed to abolish, whilst limiting the doctrine of *Volenti non fit injuria*, and declaring void all contracts restricting the application of the Act of 1880. The Bill also simplified the procedure whereunder a workman could seek his statutory remedy.

The Bill was read a second time on Feb. 20th 1893. Mr. Asquith began his speech,<sup>2</sup> which is of great historical importance, by observing that the Bill was the outcome of a long-standing controversy which both the employers and the wage-earning classes were equally concerned to adjust. The Employers' Liability Act of 1880 was avowedly a compromise. 'We have now had', he said, 'twelve years experience of its working and hardly a single session has passed without some attempt to amend its provisions and to place the law on a more logical and satisfactory footing . . .' but 'in the circumstances of the time and the state of opinion prevailing when it was passed it marked a distinct step in advance'.

The Act had limited the application of the defence of common employment, but had not abrogated it. The existing law had sufficed 'so long as industry was carried on in this country upon a small scale'. The employer was in direct personal relations with the workman, and it was comparatively easy to prove negligence on the part of an employer in the case of injuries sustained by a workman in the course of his employment. But, as time went on, the scale of industry had changed and, in particular, had given birth to those great industrial corporations which are to-day responsible for so large a part of the trade of this country. As the firm became larger the management became more impersonal, and the injured worker found it increasingly difficult to bring home to the person from whom he received his wages personal knowledge and personal responsibility for the loss which he had sustained. The workmen had now to consider the possibility of invoking in their favour another maxim of English Common Law—viz., that a master or principal is responsible for the acts of his agents or servants in the course or within the scope of their duty. Here, in contrast to the dry and unreal tenor of judicial interpretations of the law, as if its life were derived not from experience but from logic, a new and broad horizon of social life was depicted.

Mr. Asquith continued to criticize the doctrine of common employment and to assail, with great legal knowledge and forensic ability, the

<sup>1</sup> 'The Bill was intended to sweep away this, one of the silliest doctrines of our Common Law.' Cyril Asquith, *Life of Lord Oxford and Asquith*, vol. i, p. 80.

<sup>2</sup> Cf. *Debates H.C.*, vol. viii, pp. 1932 sqq.

artificial fabric which judges had built during the past sixty years upon such insecure foundations; in doing which they had overruled the general principle of English law that masters were responsible for the acts of their servants.

In order to make the new interpretation of this rule possible a 'contract' had been 'invented'—for it can only be described as an invention—an implied contract on the part of the workman to take upon himself all the risks of the employment, and among those risks the negligence of the fellow servants.

Mr. Asquith, in full sympathy with doctrines accepted two decades earlier by scientists such as Brentano, Schmoller, Wagner, Roscher, and others, who had opposed the anti-social tendencies of what was already known in Germany as the *Manchester-Schule*, stigmatized as 'fictitious' the doctrine of common employment, pointing out that

no such contract is ever, in fact, entered into between an employer and his workman . . . The Common Law of this country does not, as a rule, imply contracts which are not expressed.<sup>1</sup>

This rule, unknown to England till 1837, and to Scotland till 1868, was, he continued, placing the workman 'in a worse position, as between himself and the employer, than any stranger'. He expatiated upon the injustice of a legal fiction whereunder the small employer bore all his responsibility, while the great firms delegated their authority to 'fellow workmen' and thus escaped liability.

The doctrine of common employment [he continued] removes a great safeguard for carefulness on the part of the employer, and operates as a distinct temptation to him to neglect those precautions which his duty to his servants as well as to the public prescribed that he ought to take.

The doctrine itself has long since disappeared so far as the Workmen's Compensation Acts are concerned, but these weighty criticisms, which must have appeared to Mr. Asquith's legal contemporaries almost revolutionary, should not be forgotten. They were the outcome of experience won at bitter cost by ignoring or sacrificing the claims of millions of workmen killed or maimed during more than half a century. The survivors had lived, as paupers, or on the charity of their friends and relations and, as contemporary statistics clearly show, had often been claimed before their day by the hand of death. For them Mr. Asquith's brilliant advocacy came too late. The episode should be a warning to those who in our days denounce, as the offspring of revolutionary minds, every measure which is proposed to alleviate

<sup>1</sup> Although 'quasi-contract' on the analogy of *quantum meruit* is recognized by the law, it is only an unexpressed term of a contract already specified that is implied by the law, not the actual contract itself. A term is implied where this is necessary to give business efficacy to the agreement contained in the express words.

the heavy lot of others who, in spite of many and great improvements, still suffer by the inevitable risks of their industrial calling, and under the avoidable imperfections of the Workmen's Compensation Acts.

In this and subsequent debates Mr. Joseph Chamberlain played a leading part. His attitude differed little from that taken in regard to the Employers' Liability Act of 1880 by Lord Randolph Churchill and his friends. Mr. Gorst, in opposing the Bill, had urged the government to devise simple and comprehensive provisions for injured workmen. On the second reading of the 1893 Bill Mr. Chamberlain moved—

That no amendment of the Law relating to Employers' Liability will be final or satisfactory which does not provide compensation to workmen for all injuries sustained in the ordinary course of their employment and not caused by their own acts or defaults.<sup>1</sup>

Almost thirty years later the Holman Gregory Committee acknowledged the 'entirely new path indicated in the amendment which had been moved by Mr. Chamberlain'.<sup>2</sup> This tardy tribute, from an all-party Committee, is the more welcome in view of the reluctance of most socialist writers to acknowledge the great services rendered by Mr. Chamberlain in this and in other matters to the working classes.<sup>3</sup> Though this particular amendment was so drafted as to mask the fundamental change in the law proposed by the Bill, viz. that so far as Workmen's Compensation was concerned it was to be unnecessary for the workman to be under the obligation of proving negligence on the part of his employer. But, as the Holman Gregory Committee observed: 'when four years later another Government took up the problem, the question had to be decided whether they should proceed by the road along which the authors of the Employers' Liability Act had travelled a short distance', or whether they should strike out into the direction envisaged by Chamberlain in his amendment in 1893. Thanks to his initiative, the government of 1897 decided on the 'bolder course'. This alternative was not merely a matter of legal interpretation or judicial doctrine, but of broad social policy. Labour leaders seem scarcely to have grasped the essential principle which to-day characterizes the structure of Workmen's Compensation in all progressive countries. They sought, by making accidents costly to the employer, to induce him to do all in his power to prevent them. At the Trade Union Congress of 1877 a proposal for the universal

<sup>1</sup> *H.C. Debates*, 1893, vol. 8, col. 1961.

<sup>2</sup> Cf. loc. cit., p. 7

<sup>3</sup> George Howell, loc. cit., pp. 463 sqq., goes out of his way to belittle Chamberlain's achievement by dwelling upon the effectual efforts of the forerunners of the present Labour and Social leaders in this field, ignoring entirely the important amendment made, ten years before he published his book, by Chamberlain in 1893, and embodied in the Act of 1897, which opened a new era.

## 60 MR. ASQUITH'S OPPOSITION TO COMPULSORY INSURANCE

provision for compensation for all accidents, by a fund to be provided by a tax on commodities, was suggested by a London compositor as an alternative to the usual employers' liability resolution. It was vehemently denounced by Thomas Halliday, a miners' leader, who said that 'what they wanted was not money, but their lives and limbs preserved'. The view was endorsed by Alexander Macdonald and accepted by the Congress amid loud cheers.<sup>1</sup> When Mr. Asquith in 1893 moved his Employers' Liability Bill he found a weapon in the old trade union doctrine with which to attack Mr. Chamberlain and his amendment favouring a general compensation scheme. The prospect of the workhouse was, as we have shown elsewhere, regarded as a valuable deterrent against indolence or thriftlessness; the paupers were buried in a manner calculated to deter the poor from depending upon the public to bury them or their relations. In the same spirit of economic liberalism, the Liberal party gladly adopted the trade union view that the best way to prevent accidents was to make them expensive to employers. They were thus able to evade the dilemma in which they found themselves, when faced on the one hand with the necessity of doing something for the working classes and, on the other, with their traditional principles of non-interference with 'liberty'. Mr. Asquith gladly made the trade union argument his own and, in attacking Mr. Chamberlain's proposals, declared:

It is obvious that if the employer is to be made liable to workmen for all injuries sustained in the course of their employment, whether due to neglect of the employer or any other cause, he must protect himself by insurance, and that it is only by a system of universal insurance that such a proposal could be made consistent with justice. . . . I must point out . . . that while a general system of insurance against accidents of all kinds has a great many things to recommend it, yet it has this great drawback: that it affords no security and no incentive for the exercise of care on the part of the employer. A system of industrial assurance, unless it is supplemented and safeguarded by an ancillary law, making the employer liable—I do not say whether by criminal or civil proceedings—for accidents due to his own negligence, would be rather retrograde than a progressive measure.<sup>2</sup>

We may assume with some confidence that in later years Mr. Asquith would have readily admitted that experience had confounded the logic of this indictment, and that the development in the twentieth century of Workmen's Compensation had not been retrograde but progressive.

It should not be taken for granted that compulsory insurance would have been opposed on all sides. Mr. Howell's reminiscences<sup>3</sup> suggest

<sup>1</sup> Cf. Sidney and Beatrice Webb, *Industrial Democracy*, p. 382.

<sup>2</sup> *Hansard*, 1893, vol. 8, col. 1956.

<sup>3</sup> Howell, loc. cit., p. 430. 'When I was in Parliament, and the subject of employers'

that employers in the nineties would not have been opposed in principle to a comprehensive system of compulsory insurance, which seems to have been opposed mainly on the ground that its existence would leave the employer without any inducement to prevent negligence and to make his plant safe. The issue between these rival views was now joined, and it became evident that 'these two branches of industrial legislation would travel along separate lines',<sup>1</sup> viz.

- (i) preventive, to burden the employer with the liability and thus bring pressure on him to diminish as far as possible risks in his undertaking; and
- (ii) compensatory, to deal with the accident as it happened and provide compensation.

Mr. Chamberlain, in moving his amendment in 1893, was well aware of this dualism which, in England, remains unsolved. He said that, to his mind,

the persons whom the House ought to think of as injured persons are the family of the person who is injured or killed. It should be the moral obligation of the House to provide in every such case that these persons should be compensated as far as pecuniary compensation can be afforded.

That does not touch my equal conviction that you should maintain and preserve and, if necessary, extend and render more stringent all those provisions of the law which are necessary to make the employer properly careful in all matters that are within his proper obligation.<sup>2</sup>

How closely Mr. Chamberlain had studied the matter became apparent when he quoted at length contemporary German statistics in support of his claim that nearly 50 per cent. of all accidents were due to what we call Acts of God—that is, accidents which cannot be attributed to the personal action of workmen or employers.<sup>3</sup>

On March 24th 1893 the amendment was further discussed;<sup>4</sup> Mr. Chamberlain again pressed the point;

by far the largest number of accidents which happened in mines were due to causes which could not be prevented or foreseen.

liability came up for discussion, either in the House or in private conversations, several large employers of labour said, "Why do you not go in for compensation generally? It is only a matter of insurance. We are sick of litigation as to liability." My reply generally was, "We do not seek to saddle employers with undue responsibility." Their reply was, "We are handicapped now, and yet we give no satisfaction to the work people." The above is the general purport of conversations between employers and myself.

<sup>1</sup> Cf. Holman Gregory Report, p. 66.

<sup>2</sup> Cf. *Hansard*, 1893, vol. 8, p. 1965.

<sup>3</sup> The suggestion that 50 per cent. of all accidents are due to 'Acts of God' is legally untenable. An Act of God is closely akin to *vis major*. Cf. definitions in *Nugent v. Snell* (1876), 1 C.P.D. 444; *Fowad v. Pittard* (1875), 1 T.R. 33.

<sup>4</sup> Cf. *Hansard*, vol. 10, p. 1053.

While there was almost unanimous consent as regards the evils of the theory of common employment,<sup>1</sup> there was little genuine support for Mr. Chamberlain. Sir John Gorst, true to his own traditions and to those of his friends thirteen years earlier (see p. 39), declared that<sup>2</sup>

The only issue really before the House at the moment is whether we should adopt the scheme of the Government which restricts liability of the employer to cases in which he or his servant has been guilty of negligence; or the more extended scheme of the Right Hon. Gentleman, the member for Birmingham, which brings within the liability of the employer every case of accident which occurs in the course of employment, except it is caused by the fault or the wrong-doing of the injured person himself.

He called attention to the absence in this country of any analysis of the causes of fatal and other accidents, which had been collected from the first day of the introduction of the German Insurance Laws.

The Government [he said] was not very generous in relieving those in its employment. I could tell of some cases of miserable destitution in men who after serving their country well, have been stricken down by some accident in the extremely dangerous employment of our dockyards and arsenals . . .

If Mr. Chamberlain's proposals had little support, Mr. Asquith's Bill encountered much opposition. It was urged that it would restrict 'contracting out',<sup>3</sup> a practice dear to the apostles of 'self-help, and highly advantageous to employers.<sup>4</sup>

After long debates in the Commons, Mr. Asquith's Bill went to the Upper House, where it was so amended as to preserve the principle of contracting out. As this was a vital principle of the Bill, the government dropped the Bill rather than agree to the insertion of a clause whereunder contracting out was, subject to various safeguards,<sup>5</sup> to remain.

Mr. Chamberlain wisely urged that, in spite of the Lords' amendment, the Bill should be accepted by the Commons, maintaining that employers would be able to contract themselves out of the Bill, as amended, only by undertaking liabilities greater than the law imposed

<sup>1</sup> Cf. Sir Albert Rollit, in the Debate of Apr. 25th 1893: 'The doctrine of common employment was an anachronism, and obsolete in its application to the administration of the justice of this country.' 'He knew scarcely any branch of law that was more studded with cases than that relating to the Employers' Liability Act 1880.'

<sup>2</sup> Cf. *Hansard*, loc. cit., pp. 1205-6.

<sup>3</sup> Cf. *Debates*, loc. cit., pp. 1217-20.

<sup>4</sup> Employers made an agreement with workers to the effect that these, in case of either injury or death, should not make any claim against the employer, but should solely look to a workman's benefit society established in connexion with the factory, towards the fund of which the employers might contribute. Cf. *Griffiths v. Earl of Dudley*, in W. H. Roberts and G. Wallace, *Duty and Liability of Employers*, 1908, p. 463.

<sup>5</sup> Cf. Holman Gregory *Report*, p. 6.

upon them. It was Mr. Gladstone who insisted that the Bill, as amended, was no longer acceptable.<sup>1</sup>

A. D. Provand (see p. 54) wrote in 1894<sup>2</sup> the obituary notice of this ill-starred measure. He reiterated his arguments against the misconceptions commonly entertained by employers as to the financial and other consequences of insurance against their statutory liability, and earnestly refuted the contentions of those who saw the spectre of socialism in any state-administered system of Workmen's Compensation. He urged the creation of a fund under state control, covering all industries, premiums being paid at rates 'proportionate to the risks involved'; he outlined a comprehensive scheme of compulsory State Insurance, of which he must be regarded as a pioneer in this country.

Four years later a Conservative government took up the matter, the whole question having become, thanks largely to trade union activity, a popular battle-cry at the General Election of 1895, when the slogan

A Compensation Act for workmen, irrespective of cause of accident

had been frequently heard.<sup>3</sup> The outcome was the enactment of the Workmen's Compensation Act, 1897. Joseph Chamberlain had triumphed.

The Bill 'to make better Provision for Workmen injured in the Course of their Employment' was ordered to be printed on Feb. 2nd 1897 and was introduced as the 'Workmen's Compensation for Accidents Bill' by the Home Secretary, Sir Matthew White Ridley, on May 3rd 1897. Before we deal with it in detail we may cite as a preliminary statement of its main principles a reference to it by Lord Brampton:<sup>4</sup>

It was . . . felt by the legislature that it would be just and right to confer upon a large class of workmen, whose necessities compelled them to seek employment in certain specified dangerous occupations, in the course of which accidents, not always possible to be guarded against, are of frequent occurrence, some purely casual, others no doubt attributable to negligence or default of fellow-workmen, whom it would be idle to sue, or others whose identity could not be established, a right to claim compensation to a moderate and limited amount in respect of the loss of such wages as they were incapacitated from earning in consequence of accidental injury, upon mere proof of the accident and its resulting loss, irrespective of its cause.

Another object was to impose the obligation of providing such statutory compensation upon those to whom good sense would naturally point as the fittest persons to bear it, and to define for the convenience of the injured workmen

<sup>1</sup> Cf. *Gully*, loc. cit., p. 265.

<sup>2</sup> Cf. 'Employers' Liability' in the *Contemporary Review*, July-Dec. 1894, p. 137.

<sup>3</sup> Cf. Howell, loc. cit., p. 430. Cf. also Ness Edwards, *History of S. Wales Miners' Federation*, 1938, pp. 11 sqq.

<sup>4</sup> Cf. *Cooper and Crane v. Wright*, [1902] A.C. 302.

seeking compensation the persons from whom they are entitled to claim it. And further to provide a simple proceeding, entailing comparatively trifling expense, by which such compensation might, if necessary, be enforced. To carry out these very laudable objects the Act of 1897 was passed.

These carefully weighed words show how greatly judicial opinion had changed. They finally discredited those casuistic interpretations of the Common Law which had for half a century brought hardship, distress, and destitution to the working class of this country.

The Workmen's Compensation Act, 1897, effected 'a revolution in the branch of law which concerns relationship between employer and workman. . . . It set up an entirely new doctrine and provided rights and imposed obligations which nowhere fitted into the existing scheme of jurisprudence.'<sup>1</sup> 'It is difficult to overrate the boldness and importance of the step then taken by the legislature.'<sup>2</sup> The acceptance of the new principle<sup>3</sup> embodied in the Bill was a manifestation of the true spirit of the Tory Radical, of which Benjamin Disraeli was the progenitor and Joseph Chamberlain the exponent. The lesson should not be lost upon modern Conservatives.

The new principles thus introduced into English law were stated in the first section of the Bill as follows:

If in any employment to which the Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman his employer . . . shall be liable to pay compensation.

This was the kernel of the new Bill. The employments to which it applied were:

- (i) on or in or about a railway (we have seen to what monstrous legal conditions as regards liability just on railways the former decisions had led);<sup>4</sup>
- (ii) factory;
- (iii) mine;
- (iv) quarry or
- (v) engineering work and
- (vi) on or in or about any building which exceeds thirty feet in height.

<sup>1</sup> Holman Gregory *Report*, p. 7.

<sup>2</sup> Cf. *Report on Compensation*, 1904, p. 11.

<sup>3</sup> Cf. Ruegg and Stanes, *The Workmen's Compensation Act, 1906, 1922*, p. 1.

<sup>4</sup> The prevalence of accidents to railway servants was fully disclosed by a Report of a Royal Commission on the causes of accidents to servants of Railway Companies in 1900. During 1898 504 persons were killed and 4,149 injured by accidents to trains or railway vehicles. The corresponding figure for accidents to servants of railway companies and contractors otherwise than by movement of vehicles was 38 and 830. The occupations of shunters, goods-guards, brakesmen, and permanent-way men were particularly dangerous.

The compensation payable was based upon the workman's previous earnings. In the case of the workman's death, such compensation took the form of a lump sum not exceeding £300 payable to dependants and, in the case of incapacity for work resulting from injury, a weekly payment to be made during such incapacity, not exceeding 50 per cent. of the average weekly earnings up to a maximum of £1. Under the Employers' Liability Act, compensation takes the form of a single sum immediately payable, whereas under the Workmen's Compensation Act it is a weekly allowance. The advantage is, however, relatively so trivial and the risk involved so great that an injured workman would in general<sup>1</sup> do well to accept compensation under the Workmen's Compensation Acts. Contracting-out was still permissible, but subject to the condition that the workman must contract into a scheme which the Chief Registrar of Friendly Societies was able, after inquiry, to certify as being 'on the whole not less favourable to the general body of workmen and their dependants' than the provisions of the Act of 1897. Disputes were to be settled by arbitration. The Home Secretary expressed the hope, in introducing the Bill, 'that committees will be established between employers and men to settle the question'. Failing a committee, a single arbitrator was indicated as a proper tribunal, and lastly a county court judge; but even he was to act as arbitrator rather than as judge.

The guiding principle of the new Bill was that no question could arise thereunder as to the default of the employer, whose negligence or the reverse was to be no measure of his legal liability to the injured person.

While this principle was placed beyond doubt, the assessment of compensation proved to be complicated and difficult, particularly in cases of partial incapacity, whether permanent or temporary. In these cases the same limits applied as for total incapacity, but it was laid down that, in fixing the amount, 'regard shall be had' to the difference between the wages previous to the accident and the average amount which the workman was able to earn after the accident. This provision was particularly important when the injured person had partly recovered, and a court had to decide whether the amount of weekly payment should be reduced to the extent of his restored earning (One in every eighteen goods-guards had been injured.) The Report, signed by Lord James of Hereford, Lord Hampden, Alfred Hickman, and others, emphasized the necessity of more stringent State regulation for railways. 'Ought the State to remain quiescent, and leave it to chance or to the will of private individuals to apply a remedy? Even if the remedy is left in private hands, surely an obligation of a positive character should be imposed upon them to effect it.'

<sup>1</sup> Unless there has been a breach of the Factory Acts or a clear default at Common Law in the system of working (see *English v. Wilsons & Clyde*).

capacity. It soon became evident that the principles governing the determination of this question were not easy to apply.<sup>1</sup>

The Act did not in fact contemplate the grant of a statutory right to anything approaching full pecuniary indemnity, but merely provided that a fair proportion of the loss sustained was to be borne by the employer, who had to make such provision as would, in ordinary circumstances, suffice to save the injured person (but not his family) from suffering actual destitution as a consequence of his misfortune. It provided for compensation to the extent of half wages, the commencement of the weekly payments being postponed till two weeks after the date of the accident. The original intention of the Act was that the loss consequent upon an accident should be shared in equal moieties by the employer and the injured person, the latter to lose half his wages, and to pay, apart from his suffering, all expenses incidental to the treatment of his injury,<sup>2</sup> and the employer to pay the other half. Nevertheless, the Act made compensation for injury a reality for industrial workers; to that extent, though admittedly a tentative measure, it marked a real advance and was destined, by its sponsors, to develop, if successful, into a universal scheme of industrial assurance against accidents. It was not, of course, contemplated that beneficiaries under the Act would require, and be entitled to, assistance under the Poor Law. The standard of payments laid down was in fact then somewhat higher than that customarily adopted by Poor Law Guardians.

It is vain to inquire in retrospect whether the provision for Workmen's Compensation, made for the first time in 1880, could have been more complete and more comprehensive. A government which depends upon an elected legislature has to take into account, at any given moment, the many political and psychological considerations which are summed up in such terms as 'practical politics' or 'public opinion'. The reformers were few in numbers; they had little support in the press; they had been compelled to contest every step of the way since 1877. The lengthy debates of 1897 prove, as the sponsors of the Bill were doubtless aware from personal knowledge, that strong prejudices against the principles it embodied still existed. They themselves knew the subject well, and could expound it in detail, but many speeches delivered by their opponents were merely vain repetitions.

Though the Bill was introduced<sup>3</sup> by Sir Matthew White Ridley, as the Home Secretary, Mr. Chamberlain, now Colonial Secretary, was the driving force behind the Bill, which he claimed to be consistent

<sup>1</sup> Cf. *Report* 1904, p. 13.

<sup>2</sup> Cf. *ibid.*, p. 12 and Ruegg, *loc. cit.*, p. 1.

<sup>3</sup> Cf. *Debates H.C.*, May 3rd 1897, vol. 48, col. 1421 sqq.

with the political record and aims of the Tory party, to which he now belonged.<sup>1</sup>

The Hon. Baronet (Sir J. Joycey) went on to say that he was only astonished that a measure of this kind should come from the Tory Party. . . . This surprise is altogether misplaced; if he had any knowledge whatever of the political history during the last century he would not be surprised at all that the Tory party should have brought in a Bill of this kind.

I remember in the year 1874 I stood for Sheffield and certainly at that time the Hon. Baronet would not have denied me the title of an advanced Liberal.

During that election I made it a part of my programme to do something in the direction of social legislation which has occupied so much of our legislative time since that period; I pointed out then to my Liberal friends that they were the most backward party in this connection. I pointed out again and again that it was not so with the Tory party. . . . I was ashamed that the Party to which I belonged had been so backward in the matter. I pointed out that all this social legislation had been initiated and to a large extent carried out by the Tory party—that the Liberal party had done a great deal in the way of political reforms for the working classes, but that so far as social legislation for their welfare was concerned almost the whole credit was due then, as it is now, to the Tory party. . . . We introduce this Bill to the House and to the country as an act of justice to and of sympathy with the working classes of this country.<sup>2</sup>

He held firmly to the new and essential principles of the Bill. Opposing an amendment designed to limit the liability of an employer in the case of an accident arising 'by wilful or wrongful act or default of the workman', he said:<sup>3</sup>

We wish to avoid bringing in again the old principle of contributory negligence under another name. We think it has been clearly and conclusively proved that the introduction of that principle into employers' liability has been the cause of the greatest hardships and injustice to the working people; . . . we should have our words so simple that they are not likely to be the subject of material litigation.

Mr. John Burns, from the Opposition Benches, supported the Bill but opposed 'contracting-out'.

The Oddfellows, one of the largest benefit societies in the world, whose membership was nearly a million, were unanimous as a society against contracting-out. . . . The National Conference of Friendly Societies which met the other day, where nearly three million members were represented by elected delegates, decided unanimously that contracting-out was a principle which ought not to be allowed by law. . . . The Trades Union Congress which, whatever its political differences might be, was generally united on industrial matters, came to a similar decision.<sup>4</sup>

Referring to the clause requiring the Registrar of Friendly Societies to satisfy himself, before approving contracting-out agreements, that

<sup>1</sup> Cf. *Debates, H.C.*, May 18th 1897, vol. 49, col. 810.

<sup>2</sup> Cf. *ibid.*, col. 811.

<sup>3</sup> Cf. *ibid.*, May 25th 1897.

<sup>4</sup> Cf. *ibid.*, May 27th 1897.

they did not offer worse conditions of compensation than those obtainable under the Bill, Mr. John Burns said:

If the Registrar were fair he would kill all the contracting-out schemes submitted to him, for there was none of them which gave its members actuarially anything like the financial benefits which the workmen got from their benefit and friendly societies. (*Laughter*) . . . The contracting-out scheme was one of the most nefarious systems of compulsion which had ever been sanctioned by this House.

Colonel Mellor replied that there was nothing like compulsion in the Bill. The Registrar would guarantee 'that the workman was going to get something better than that which he relinquished'. Mr. Asquith retorted that no such advantage could be expected from contracting-out for, under the conditions of the Bill, either a particular contracting-out scheme was disadvantageous to the workman, in which case the Registrar would reject it, or else it was advantageous, in which case what employers would desire it? He warned the House that

they were going to put on the shoulders of the Registrar of Friendly Societies . . . a task of enormous complexity (*Hear, hear*), a task for the performance of which, however skilled he might be in the determination of actuarial questions, neither he nor any other Government Department, possessed the necessary knowledge, the necessary experience, or the powers of judgment.

Contracting-out was not entirely suppressed; employers as a body claimed it in the name of 'liberty'. But Mr. Asquith's contentions proved to be correct: the power to contract out, further restricted by the Act of 1906, was very little used,<sup>1</sup> apparently for the reasons indicated by Mr. Asquith. It might have been better to forbid the exercise of a form of 'liberty' so dangerous that its application had to be so severely restricted by law as to prove useless in practice.

The strongest opposition to the Bill of 1897 came from those who foretold that it would adversely affect the economic position and future development of British industry. The charge on industry would be heavy. 'If the burden became too great how would they shift it?'<sup>2</sup> But Sir Charles Dilke had called the attention of the House a few days earlier<sup>3</sup> to the experience of Germany, whose industrial development and progress refuted the contention that the burden of such legislation was too heavy for employers. He quoted Dr. Boedicker, the head of the German system, who had done much to make it a success, as saying:

For ten years we have given full compensation from the employer even where the accident is caused by the gross fault of the workmen. The employers wish for no change. If we are to stop or reduce that compensation in such cases then we ought clearly to increase it in the case of gross fault of the employers. . . .

<sup>1</sup> Cf. Holman Gregory Report, p. 63.

<sup>2</sup> Mr. Seton-Carr, *Debates H.C.*, May 31st 1897.

<sup>3</sup> Cf. *Debates H.C.*, May 25th 1897.

To stop compensation in the case of gross fault of the worker is to throw a bomb-shell into the whole principle of compensation.

In spite of the earnest denials and disclaimers of the government, the Bill, which appeared 'very modest' when compared with the German system, was still regarded as imposing an intolerable burden on industry. Mr. Seton-Carr predicted that the allocation and distribution of compensation might 'drive some industries out of existence'. He moved an amendment which struck at the fundamental principle of the Bill, by exonerating the employers from liability for compensation when the accident had arisen 'by wilful or wrongful [*sic*] act or default of the workman';<sup>1</sup>

if the Bill passed bankers would not extend the same credit to collieries which they were giving at present. That was a practical effect of the Bill. That was a thing that owners must provide against. . . . Half the glass works in the country had been shut up during the last 30 years, and the importation of plate and sheet glass had enormously increased. Yet upon this struggling British industry they proposed to throw a new heavy burden.

Mr. Chamberlain, on the other hand, declared that as regards coal-mining 'the charge would not exceed three farthings per ton'. His calculation proved well within the mark.<sup>2</sup>

The Tory government stood firm against Liberal opposition and, thanks largely to Mr. Chamberlain,<sup>3</sup> the Bill became law in substantially its original form. Though practical business men outside the House had roundly condemned the Bill, financiers were less nervous on the subject than when the Employers' Liability Act was under discussion. Insurance offices saw that new and lucrative business would follow, and began to prepare for it.

In the words of the *Economist*:<sup>4</sup>

As the result of a prolonged inquiry, a tariff has been drawn up by the Companies—a tariff, however, which Mr. Chamberlain has denounced as preposterously extravagant. On the other hand, the offices assert that it is no higher than the data available appears to indicate that safety requires, but the force of that assertion is certainly weakened by the fact that some of the offices are already breaking away from it, and it may be taken for granted that in framing it, when any doubt arose the benefit was taken by the companies.

<sup>1</sup> Cf. *Debates H.C.*, May 25th, 1897, col. 1281 sqq. and June 6th, *ibid.*

<sup>2</sup> Cf. *ibid.*, June 2nd 1897. For further details of this matter cf. Report of 1904, loc. cit., p. 27. Mr. Joseph Walton said in the House of Commons in April 1906 that 'In the County of Durham, under a mutual system of insurance amongst coal owners the average cost had been not 3d. (as predicted in 1897) but  $\frac{1}{2}$  of a penny per ton.'

<sup>3</sup> Cf. Gulley, loc. cit., p. 266: although the Bill was in charge of the Home Secretary 'the Colonial Secretary assisted materially in drafting the Bill and assumed a large share of responsibility in conducting it through the various stages of procedure before the House'.

<sup>4</sup> June 4th 1898.

This criticism was later confirmed by evidence given by Mr. Stanley Brown, General Manager of the Employers' Liability Assurance Corporation, regarding the tariff drawn up in 1898 by the Accident Offices Association, which relied largely on the statistics connected with the German and Austrian business, certain British factory statistics, the Benefit Society returns, and on their experience under the Employers' Liability Act. In reply to questions by the Committee of 1904, Mr. Brown agreed that 'the rates charged were too high, and were reduced by the Tariff Association', which, in fact, broke down the year after its formation. The members 'were insuring companies and they wanted to be free to quote lower rates'.<sup>1</sup> This was not a creditable beginning. The Mining Associations found that the rate asked by the insurance offices—sometimes £2 5s. for every £100 paid out in wages—was too high. Mutual Insurance Societies were accordingly formed and, by the beginning of the present century, were firmly established.<sup>2</sup> They quickly replaced the old clubs which had been formed by employers and employees.<sup>3</sup>

The assumption of full responsibility in the great majority of undertakings by insurance companies or mutual associations dispelled many apprehensions. Employers, fearful of increased burdens, discovered that the cost was not heavy and found consolation in the knowledge that the 'greater evil', viz. compulsory accident and injury insurance by the State, had been avoided. The *Economist*, however, reminded its readers that, in the absence of compulsory insurance, the solvency of the employer remained a decisive factor in the last resort, but to go behind it

would mean a measure of State interference for which even yet we are probably unprepared.<sup>4</sup>

<sup>1</sup> Cf. *Report* 1904, pp. 33-4; also *Evidence*, A. 7855, 7868, and 7872-4.

<sup>2</sup> For details cf. *Report* 1904, pp. 26-33. *Evidence*, Q. 4182, 4304-5, 5874, 6095, and *passim*. They were first started in Lancashire, Yorkshire and Nottinghamshire, Derbyshire and Leicestershire, North Staffordshire, Scotland, and South Wales.

<sup>3</sup> 'So far as concerns works' clubs carried on by employer and workmen,' explained a witness speaking on behalf of employers engaged in the Engineering, Ship-building, and Ship-repairing trade on the Northumberland coast, 'they have to a very large extent died out.' Cf. *Report* 1904, *Evidence*, A. 3507. Another witness regretted that the operation of the Workmen's Compensation Act, 1897 'has had the effect of terminating many works' accidents funds', *ibid.*, A. 3656.

These funds must, however, not be confounded with the Benefit Clubs which were run by the workmen independent of any assistance by the employers as works' clubs and so on. That they were not, or were much less, affected by the Act was explained by several witnesses, cf. *ibid.*, A. 3507, 3422-4 and also *Report*, Appendix III, p. 155: Replies from Workmen's Association, letter from Amalgamated Society (Section 6): 'How have the Acts affected Friendly Societies, Accident and other Benefit Funds, &c.?'

<sup>4</sup> *Economist*, June 4th 1898.

## PART III

### THE FIRST TEN YEARS

- IV. WORKMEN'S COMPENSATION COMMITTEE, 1904
- V. THE WORKMEN'S COMPENSATION ACT, 1906
- VI. THE FARRER REPORT (POST OFFICE AND  
WORKMEN'S COMPENSATION)



## CHAPTER IV

### THE WORKMEN'S COMPENSATION COMMITTEE, 1904

So long as all the increased wealth which modern progress brings, goes out to build great fortunes, to increase luxury, and to make sharper the contest between the House of Have and the House of Want, progress is not real and cannot be permanent.

HENRY GEORGE, *Progress and Poverty*.

THE Workmen's Compensation Act, 1897, came into force on July 1st 1898. Within five years a parliamentary committee was appointed to pursue fresh inquiries and to propose amendments to and extensions of the law as it then stood. The legislative action taken on their recommendations constitutes the basis of existing Workmen's Compensation Acts. Later additions to the Statute Book, particularly those which followed the Holman Gregory Report of 1922, though not without importance, maintained the basic principles which underlay the Act of 1897 and the even more important Act of 1906.

Between these dates the Workmen's Compensation Act of 1897 was extended to cover, broadly speaking, all persons in agricultural occupations.<sup>1</sup> This forward step created some difficulties, which were explained by the Report of 1904.<sup>2</sup> Other industries had prior claims to protection, for the Act of 1897 was, in the main, confined to industries under statutory regulation, whilst no such principle applied to the Act of 1900. The Act of 1897 was limited to industries carried on by way of trade or for public purposes; that of 1900 included persons in private employment. The difficulty of distinguishing the kinds of employment to which the statutory right of compensation applied was thus greatly increased by the Act of 1900, which did not purport to exempt small employers from liability. As the Act of 1900 was repealed in 1906 and the right to compensation of persons in agricultural pursuits was thereafter governed by the general Workmen's Compensation Acts, we may leave the discussion of the agricultural features of Workmen's Compensation to later chapters.

A Departmental Committee to inquire and report 'what amendments in the Law relating to compensation for injuries to workmen are necessary or desirable', and 'to what classes of employments not now included in the Workmen's Compensation Acts those Acts can be properly extended, with or without modification', was appointed by

<sup>1</sup> 63 & 64 Vic., c. 14. Agriculture was so defined in the Act as to include horticulture, forestry, husbandry, live-stock keeping and breeding, poultry-farming, bee-keeping, fruit-growing, and market-gardening. For other definitions of agriculture see *Index to Statutory Definitions*, Stationery Office, 1936.

<sup>2</sup> Cf. loc. cit., p. 104.

the Home Secretary, Mr. Akers-Douglas, on Nov. 16th 1903. The Chairman was Sir Kenelm Digby, the members Sir Benjamin Browne, His Honour Judge Lumley Smith, Captain A. J. G. Chalmers (Board of Trade), and Mr. George N. Barnes (Secretary of the Amalgamated Society of Engineers). The Committee was assisted by experts such as Mr. (later Sir) C. E. Troup, Mr. (later Sir) E. W. Brabrook, a former Chief Registrar of Friendly Societies, whose book on Friendly and Benefit Societies is one of the classics of English social literature,<sup>1</sup> and Mr. A. H. Ruegg, K.C., an outstanding legal authority on the subject.<sup>2</sup> It was in close touch with the Chief Inspector of Factories, the Inspector of Mines, and heard representatives of the British Medical Association.

From the conclusions and suggestions of the Committee the following points emerge as of outstanding importance, in view of later developments.

1. Though the general conclusions reached were rather favourable than otherwise, the Committee satisfied itself that the Act of 1897 had already gained 'a bad name for having been the cause of an excessive amount of litigation',<sup>3</sup>

owing to various defects in the Act itself, and in the machinery by which it is enforced, which in our opinion give rise to much preventable litigation.

At the same time the Committee emphasized<sup>4</sup> that

litigation is to a considerable extent unavoidable in giving effect to an Act of Parliament dealing with the question of Compensation for industrial accidents.

They claimed that

such questions as whether or not the injury was caused by 'accident', the extent and the duration of the injury, whether the occupation of the injured man falls or does not fall within the Act, what the amount of compensation should be, must give rise to contests which some authority must decide. No Act of Parliament could possibly be framed which could furnish definitions sufficiently clear and comprehensive, or tests for deciding disputes in questions of fact so certain as to be capable of universal application.

They reached the conclusion that, on the whole,

... the amount of actual litigation produced by the Workmen's Compensation Acts of 1897 and 1900 has been very small when compared with the great number of cases settled by agreement without any recourse whatever to legal aid, or to Proceeding of Court.

<sup>1</sup> Cf. E. W. Brabrook, *Provident Societies and Industrial Welfare*, 1898.

<sup>2</sup> He was appointed to the County Court Bench in 1907.

<sup>3</sup> A great deal of testimony was heard on this subject. Cf. *Evidence*, A. 1460, 1477 sqq., 1499-1500, 2301-11, 2324-5, 2576-2578, 3404 sqq., 3612, 5004, 5528, and *passim*.

<sup>4</sup> Cf. *Report*, p. 21.

The Committee, however, held that the proportion of litigation should be still further reduced, and made proposals to this effect.

The complacency of the Committee, although hardly criticized at the time by competent social writers such as Shadwell,<sup>1</sup> scarcely seems justified by the evidence. They seem to have relied upon successive legal interpretations to diminish litigation and, with a view to accelerating this process, made proposals to facilitate access to the courts.<sup>2</sup> But this and subsequent Committees, relying on statistical evidence, seem not to have realized that in such matters it is not cases taken to court which alone matter, but the unknown number of cases which are 'settled' without recourse to the courts, on terms unfavourable sometimes to the employer, but more often to the injured workman, owing to the dubiety of the law.

Behind each case which comes before a judge there may lie numbers of cognate cases of earlier date which, had the law been declared earlier, might have been settled more equitably. This aspect of litigation must be regarded as of greater significance than the number of cases heard in court, compared with 'the great number of cases settled without any recourse whatever to legal aid [*sic*] or proceedings in Court'. The Report quoted in this connexion the evidence of trade union officials,<sup>3</sup> who naturally stressed the activity of their unions in settling cases out of court, but did not mention that only a small minority of workmen (then about 2 million) belonged to a trade union, and fewer still to one which could readily afford them legal aid. The Report further quoted the evidence of Mr. Robinson, a representative of employers of the north-east coast, who noted that a larger proportion of cases than at present would be brought against the employers and defended by them in Court, were it not that in many instances their disinclination to incur annoyance, trouble, time and expense has led to payment in excess of what was warranted both as regards compensation to workmen and expenses to solicitors.<sup>4</sup>

The Committee did not inquire how far such settlements were really to the advantage of employers. If, however, employers had hesitated to have recourse to the courts of justice, how much greater must be the reluctance of injured workmen, whose initial position was necessarily more precarious, and to whom an unfavourable verdict spelt ruin. This point was ignored in the special Memorandum prepared by Mr. G. N. Barnes,<sup>5</sup> though an employers' association observed that<sup>6</sup> workmen were not sufficiently acquainted with the provisions of the Act to avail themselves of it in questionable cases.

<sup>1</sup> Cf. loc. cit., p. 420.

<sup>2</sup> Cf. *ibid.*, p. 21.

<sup>3</sup> Cf. *Evidence*, A. 3552-7, and 3407, also *Report*, p. 17.

<sup>4</sup> Cf. *ibid.*, A. 3608.

<sup>5</sup> Cf. *Report*, p. 131.

<sup>6</sup> Cf. *ibid.*, p. 145.

Some years later Sir Leo Chiozza-Money wrote:

There are only 2,000,000 Trade Unionists in the United Kingdom and but a small proportion of our workpeople are in a position to get advice as to how to proceed under the law. The average workman would as soon think of employing a solicitor as of flying to the moon, and the contest between the uninformed workman and the insurance company, expert in resisting claims, is absurdly unequal. Every year tens of thousands of claims are whittled down or inadequately settled for small, but tempting, lump sums.<sup>1</sup>

Though matters have improved since then, the problem is still with us, and is dealt with at length elsewhere in this book. In 1922, ten years later, a competent student<sup>2</sup> of the subject wrote:

Coming at a moment of great physical distress, when the workman is entirely uncertain as to his future life, attracted by the prospect or sight of a sum greater than he ever possessed, and wholly ignorant of his rights, he is tempted to settle his case out of Court.

The Report of 1904 did not deal with this aspect under the heading of 'litigation'. Had the Committee applied their mind to it, other and more effective legislation might have resulted.

They seem to have regarded 'litigation' as a necessary consequence of defective and complicated legislation, and as an unavoidable evil to be reduced as far as possible. That every claim might come before and, if need arise, be adjudicated upon by an impartial arbiter did not occur to them, and they forgot that the small number of cases in which recourse was had to the courts might well be interpreted, in existing social circumstances, as proof that the law or the machinery of justice, or both, were at fault—a point of view in fact urged in 1893 by Mr. Asquith and frequently adduced in other branches of law.

2. The second problem to which the Workmen's Compensation Committee of 1904 directed its particular attention was that of safety. Whether or not compensation laws would operate in favour of increased safety was much discussed when the 1897 Bill was before Parliament. No evidence adduced before the Committee<sup>3</sup> enabled them to say that the Act of 1897 had done much to ensure greater safety for workmen. The past ten years had seen great improvements, at all events in the more highly organized industries, but how far this was due to the new legislative or statutory regulations, affecting mines, factories, and railways, the Committee could not estimate. There was, however, some

<sup>1</sup> Cf. L. G. Chiozza-Money, M.P., *Insurance versus Poverty*. With an introduction by the Right Hon. D. Lloyd-George, M.P., 1912, p. 53.

<sup>2</sup> Cf. J. Cohen, *Compensation*, p. 133.

<sup>3</sup> Cf. *Report*, pp. 22-3.

evidence which suggested that the almost universal practice of insuring against liability under the Acts made the employers more careless.<sup>1</sup> Commander Smith, R.N., one of the Superintending Inspectors of Factories, for many years District Inspector of Factories in Sheffield, and Secretary to the Departmental Committee on Dangerous Trades, observed in the course of a full statement on the subject that it was

a common thing, where an Inspector says: 'This is very dangerous, a man was killed last year by this kind of machinery, you ought to do something', for the occupier to reply: 'Oh, I am insured, you know.'<sup>2</sup>

We have already mentioned the peculiar connexion between the measures of safety provided by the Factory Acts and the provisions for compensation of employers' liability and Workmen's Compensation. It was clearly intended that these complicated branches of industrial legislation should travel along separate lines. The Workmen's Compensation Act had increased the difficulty of Factory Inspectors in enforcing against employers the provisions of Section 136 of the Factory and Workshop Act, 1901, whereby an employer was and is still liable to be fined on a higher scale where bodily injury has been sustained by a workman in consequence of a breach by the employer of the provisions of the Factory Acts.<sup>3</sup> According to this witness, one of the effects of the Workmen's Compensation Act had been to make Courts of Summary Jurisdiction exceedingly reluctant to impose a fine on a higher scale. To this extent, in his opinion, the operation of the Workmen's Compensation Act had been detrimental to, rather than advantageous to the safety of workmen. The Committee of 1904 accepted his view.<sup>4</sup> Foreign and colonial legislation upon the subject of Workmen's Compensation was explained and analysed at length in a special memorandum; German precedents run like a thread through all early discussions either of employers' liability or compensation, and it was evident that the German example might be very helpful.

<sup>1</sup> Cf. Evidence of Mr. Stevenson of the United Builders' Union, A. 2601.

<sup>2</sup> A. 7255.

<sup>3</sup> Cf. similar liabilities were also imposed by the Coal Mines Regulation Act, 1887, s. 70 and the Metalliferous Mines Regulation Act, 1872, s. 38. Where a Court of Summary Jurisdiction inflicted a high penalty under these powers, the Secretary of State was entitled to appropriate the whole or such part of the penalty as he thought fit for the benefit of the injured workman. This had been found by experience a very effective power, and had in fact been regarded as a mode of providing a certain amount of relief in the form of so-called 'penal compensation'. The Workmen's Compensation Act, 1897, provided that if any such fine (that is, a higher fine where bodily injury has been sustained by breach of statutory legislation) or any part thereof had been applied for the benefit of the person injured, the amount applied so should be taken into account in estimating compensation under the Workmen's Compensation Act. (*Report 1904, Evidence*, A. 7249-55.)

<sup>4</sup> Cf. *Report*, 1904, p. 80.

The machinery of the German insurance associations was clearly intended to ensure greater safety to the workmen. The Committee explained that the principal means adopted in Germany to ensure greater safety under Workmen's Compensation legislation were:

1. Separate systems of inspection and
2. A danger tariff.<sup>1</sup>

The latter is of particular importance as a legal provision combining a legal right of compensation with measures for the prevention of accidents. The problem in Germany had early been linked with the formation of mutual trade associations under state control (*Berufsgenossenschaften*). These represent the foundation of Workmen's Compensation since the laws of 1884 and of 1900 were enacted, whereunder it is the duty of every compulsory group association to establish a 'danger tariff', which imposes upon those establishments in which accidents most frequently occur a rate of contribution to the insurance funds proportionate to the frequency of accidents occurring in a particular establishment. These associations, established or supervised by the State, are invested with powers of inspection and control, designed to lessen their financial responsibilities by diminishing the number of fatal and other serious accidents. The German statistics proved that precautions against danger, coupled with administrative attention to medical and surgical treatment of accident cases, had diminished the percentage of fatal accidents and, in a still more marked degree, of accidents causing permanent or temporary disablement.

The proportion of fatal accidents per 1,000 insured persons had steadily fallen from 0.73 in 1886 to 0.41 in 1902; and cases of permanent disablement from 0.48 in 1886 to 0.07 per 1,000 in 1902. On the other hand, the proportion of insured persons per 1,000 who were permanently 'partially' disabled had risen between 1886 and 1902 from 1.06 to 2.90, and of cases of temporary disablement from 0.56 in 1886 to 2.90 in 1902. It was inferred from these figures that, notwithstanding the attention paid to the prevention of accidents and the improvement in medical and surgical treatment, the tendency under the German system was towards a large increase in the percentage of minor claims, a consequence, probably, of more widespread acquaintance with the benefits of the law and of the possibilities of claiming compensation thereunder. It was to the credit of the English Committee to have gone into detail in these matters, and it must have been impressed by the results of the comparative analysis of conditions in England and abroad, particularly in Germany. In the Memorandum prepared on this matter by Mr. Kenelm E. Digby, assisted by Mr.

<sup>1</sup> Cf. *Report*, p. 23.

Wotzel, of the Labour Department of the Board of Trade, we find the notable conclusion that '*... it is usually found that the more completely the system of compulsory insurance is developed the more thorough-going and effective is that portion of the legislation which deals with the prevention of accidents*'.<sup>1</sup>

How different was the view arrived at by these skilled investigators from the loudly proclaimed conviction of many employers that every extension of Workmen's Compensation legislation in the direction of compulsory insurance would only tend to weaken the employer's feeling of responsibility, and thus operate ultimately to the disadvantage of the workmen! Yet the important conclusions which the Committee reached as a consequence of their researches into foreign legislation were almost completely ignored when, in 1906, the new Bill was debated in the Commons, then dominated by a Liberal government. The intensive investigations by the Committee bore no fruit. A vain attempt to discuss Workmen's Compensation in foreign countries was made by Sir Charles Dilke, who had already dealt with this aspect of the point in 1897.<sup>2</sup> He observed caustically that

The most extraordinary fact about all our legislation of this kind was that we never paid the slightest attention to what took place in other countries. We were hopelessly in the rear of every country in Europe in this matter, and owing to the fact that we never attended any of the international conferences we did not know that all the problems which were being inquired into to-day had been inquired into and solved by any foreign country.

'Compulsory insurance', he added, 'in some form or other lies at the root of all the improvement', and for this new legislation was required.<sup>3</sup> But he talked to deaf ears, and even his biographers, one of whom, Miss Gertrude Tuckwell, was a pioneer of social legislation, have barely mentioned his interest in this subject. Though German experiences indicated that safety measures, interlocked with the administration of Workmen's Compensation, had afforded greater safety and protection to the working-class, the Committee of 1904 contented itself with the jejune conclusion that they felt

... unable to come to the conclusion that the operation of the Compensation Act of 1897 has had any marked or ascertainable effect one way or the other upon the safety of the workmen.

3. A further question, much discussed<sup>4</sup> in Parliament during the Debates on the 1897 Bill, related to the effect of the Act upon the

<sup>1</sup> Cf. *Report*, 1904, p. 33, in vol. iii. *Memorandum on Foreign and Colonial Laws relating to Compensation for Injuries to Workmen*, pp. 33-4. The principal provisions of the German Compensation Law of July 6th 1884 are translated at pp. 42-5.

<sup>2</sup> See p. 68.

<sup>3</sup> Cf. *Debates*, H.C., Mar. 26th, vol. 154, p. 906.

<sup>4</sup> Cf. *ibid.*, vol. 49, pp. 641-2, 646, 806, 1461.

provision for industrial accidents made by mutual and benefit societies. We have already mentioned that such societies for accident compensation, supported by workmen and, usually to a small extent, by the contributions of employers, had been in existence, in some form or other, since the eighteenth century. Evidence tendered to the Committee of 1904 showed that the effect of the 1897 Act had been to wipe out these societies, so far, at least, as concerns 'accident benefit' (see p. 70). These joint institutions must, however, not be confounded with the Workmen's Benefit Clubs run by the wage-earners without any assistance by their employers, whose activity had not been in any way diminished by the Act; for, as Mr. J. N. Bell of the National Amalgamated Union of Labour explained, members of such Benefit Clubs had, if they wished to belong further to the club, to continue their subscriptions, which included any benefits provided.<sup>1</sup> They served many other objects, and the reduction of liability under one heading made better benefits in other directions possible.

On the other hand, from the details furnished to the Committee of a particular society of this kind,<sup>2</sup> it was evident that 'sick benefit of the society was not directly affected by members injured at work', but that the Superannuation Fund had been indirectly affected by the working of the 1897 Act—an important point. The society in question paid benefit to any member after twenty years' membership, no matter what his age might be, if he was unable to work in trade; after the passing of the 1897 Act it was found out that the average age at which members drew upon this fund, prior to the passing of the Act of 1897, was  $67\frac{1}{4}$ , but, since the Act had come into force, the average had been reduced to 63 years. It was contended in the Memorandum sent to the Committee of 1904 that, 'whether it had been solely due to the operation of the Acts or not [a point to which we shall revert later] there has been a marked disinclination on the part of employers to retain or start workmen who had got to the wrong side of fifty'. To that extent the Act had imposed a fresh burden upon such clubs or benefit societies. The Committee might usefully have drawn attention to the lack of uniformity of workmen's compensation in this country as compared with the comprehensive and unified system under compulsory state insurance. But it refrained from doing so, although, as we shall see later, it was not entirely opposed to a compulsory system under state control.

It is the more important to understand the conditions and functions of such clubs and benefit funds, as some writers have pictured them as forms of the 'thrift' and 'self-reliance' so dear to followers of Samuel Smiles. The actuarial basis of such funds was necessarily narrow; as

<sup>1</sup> Cf. Q. 3424-5.

<sup>2</sup> Cf. Appendix III to the *Report*, pp. 155-6.

accidents grew in number and severity, and the cost of treatment rose,' they became increasingly inadequate, and could not possibly have been developed to meet modern needs. How these funds really 'worked' is vividly shown by the evidence of Mr. Edmund Hibbert, representing the ordinary members of Lancashire and Cheshire Miners' Permanent Relief Society before the Holman Gregory Committee.<sup>1</sup>

From November 1866 to September 1871 there occurred in Wigan coal field a series of colliery explosions involving the loss of 317 lives, by which 150 widows and 354 children were bereaved of their husbands and fathers. There being, as already indicated, no provision for these sufferers, a General Committee was formed of gentlemen from the eight Colliery districts in which the many accidents referred to had taken place, and the sum of £17,000 became exhausted, and the remaining large number of widows and children were left without any assistance whatever. It should also be borne in mind that the sufferers by single fatalities and the injured men were similarly without suitable provision, and the records of that time show that it was no uncommon sight on colliery pay-days to see widows and children and disabled men begging for help from the miners as they came away from the pay office. **I may say that this is done away with now on account of the Workmen's Compensation Act . . .** At some of the collieries there existed small unregistered clubs without any systematic or regular collection of contributions, and nearly always following the disastrous habit of dividing the funds still remaining in hand at the end of the year. The result was that the clubs were only able to grant allowances to the injured workmen for a few weeks, and similarly with regard to widows; the funds soon became exhausted, and the widow and the children, and the injured miner alike, had no other resource but to seek the aid of the Poor Law, enter the workhouse, or to beg from their fellows.

This contemporary testimony (for Mr. Hibbert had himself seen what he related) should serve as a warning to those who, without any knowledge of the historical facts, draw idyllic pictures of a former golden age of freedom of contract, help, and other ideals of nineteenth-century Liberalism.<sup>2</sup>

4. The Committee considered at length how far the Workmen's Compensation Act of 1897 had affected employers within its scope—a question of the 'utmost importance and difficulty'.<sup>3</sup> The introduction of the 1897 Act had been accompanied by a Cassandra-like chorus (see p. 69), some commentators predicting that the 'unbearable burden' would ruin some industries. Such voices were no longer heard, but the Committee felt obliged to find an answer to the question: 'What has experience proved to be the extent of the pecuniary burden

<sup>1</sup> Cf. quite recently *National Health v. The State, Quarterly Review*, Jan. 1938, by B. G. M. Baskett, who attacks Workmen's Compensation and claims that ' . . . voluntary accident funds in the mines worked well; they controlled the accident rate and cost the community nothing'.

<sup>2</sup> *Evidence*, Pt. I, pp. 494-5.

<sup>3</sup> Cf. *Report*, 1904, p. 25.

cast on the employers? Has it been excessive? Is it likely to increase, and to what extent?

Here, for the first time, an important, though academic, consideration was brought into the discussion. There was clearly an 'incidence of the burden' which the Committee found difficult to analyse. (We may add that those whose primary business it should be to do so, viz. the scientific economists, have not as yet seriously made the attempt.) This is the problem of the ultimate incidence of the burden of Workmen's Compensation. In the first instance, so far as employees contribute nothing, it falls on the employer. But the source of payment of the insurance premiums is not necessarily identical with their ultimate incidence; the problem, moreover, differs from other social improvements which might, at first, be opposed by the employers on the same grounds as being too heavy a burden to industry; as, for instance, higher wages, shorter hours, or an improved remuneration. These may, in the long run, be of advantage to employers by encouraging more economical systems of work. Even with the inclusion of health provisions it may be argued that the outlay, so far as it falls on the manufacturer, may be recouped by diminished absenteeism or improved conditions of health of the workmen, a point of particular importance where a body of skilled workmen is concerned.

Such indirect advantages cannot be claimed for compensation for fatal accidents and total or even partial disablement, so far as it prevents the worker from resuming his former employment. The only sort of recompense to the employer may be found, as the Report of 1904 notes, 'in the improved relations [of the employer] with his workmen', but this possibility can hardly be set against the immediate effects of the burden upon his costs of production and his profit-and-loss account. Another question is whether the employer is in a position to throw the additional cost on the consumer. Among stevedores, for instance, it was a common practice to include in the price of a contract the estimated amount of insurance against accidents.<sup>1</sup> When labour is unorganized, there may be cases in which the cost of insurance against workmen's accidents is thrown without disguise upon wages in the form of a deduction equal to or more than the premiums to be paid. Exceptional instances of this kind were brought to the notice of the 1904 Committee. A still wider field of conjecture is involved by the possibility of throwing the burden of Workmen's Compensation on the consumer. Trade had been, on the whole, good between the passing of the Workmen's Compensation Act, 1897, and the inquiry of 1904, and, under such conditions, the burden to the employer was less felt and more likely to be reflected in higher prices than in periods

<sup>1</sup> Cf. *Report on Workmen's Compensation, 1904, Evidence, A. 7943, 5519-20.*

of trade depression. We do not underrate the importance of these and similar considerations, but, for the purpose of our inquiry, the main point is that the incidence of the burden of compensation for accidents is primarily on the employer.

We have already stated that the gloomy apprehensions of employers were not realized; we have quoted the figures for the mining industry immediately after the Act was passed, which, as Mr. Chamberlain foretold, amounted to about three farthings a ton. In a reply to a Home Office circular on the subject, the General Accident Assurance Corporation Ltd. stated that the financial burden cast upon employers 'is by no means so great as some people assert, but certainly greater than the Right Hon. Joseph Chamberlain and other statesmen anticipated at the time of the passing of the Workmen's Compensation Act'. Other offices described the burden as heavy, but hesitated to give specific figures, declaring that the wide differences in the groups of industry made any general statement impossible. Some replies noted that the burden was constantly increasing; others did not reply to this question.<sup>1</sup> The manager of an important mutual indemnity office connected with coal-mining gave figures showing that the total cost of claims for fatal and non-fatal accidents (including costs of management) rose from 0·36*d.* per ton raised in 1899 to 0·64*d.* in 1903.<sup>2</sup> The wages paid averaged about 5*s.* 9*d.* per ton, so that, in terms of compensation paid under the Act per £100 wages, the corresponding figures would have been: 10*s.* 5·217*d.* in 1899, and 18*s.* 6·608*d.* in 1903. The increase was due mainly to the accumulated burden of permanent weekly payments.

The task of the Committee was made more difficult by the fact that insurance offices began by charging unduly high premiums. In this respect the Committee made no secret of its preference for mutual indemnity associations as contrasted with proprietary offices, and expressed the hope that a 'further development of these associations might overcome many difficulties which beset the working of the Act'. They contrasted the evidence of these mutual associations of employers with that of the insurance companies which looked at the matter 'from a somewhat different point of view, for they have to earn dividends for their shareholders, and are conducted for profit', while 'the Associations look only to provision of sufficient indemnity for their members, and of security against accumulation of liability, or a sudden catastrophe on a large scale'.<sup>3</sup> (We shall consider later how far it is possible to justify the contention that mutual associations are more economical than proprietary concerns.) The Committee do not seem to have

<sup>1</sup> Cf. Appendix to Part I of the *Report*, pp. 160 sqq.

<sup>2</sup> Cf. *Evidence*, 1904, A. 4304-5, 4272, 4324.

<sup>3</sup> Cf. *Report*, 1904, p. 33.

accepted the view, still popular at that time, that the most economical solution would be to leave the matter to the free play of individual choice. They found that the pecuniary burden imposed by the Acts 'has not been excessive', but observed that it was tending to increase 'in consequence of the rapidity with which the claims are growing', and urged that the 'greatest caution is required before the personal liability imposed by the Act on the employer is materially increased'.

5. If Workmen's Compensation did not justify the fear of the employers, did it fulfil the hopes of the working-class? No reader of the Report can avoid the impression that the Committee as a whole was less concerned with the interests of the workmen than with those of the employer. Twelve pages of the Report, devoted to 'the burden' (on employers), are followed by only five pages regarding 'the operation of the Act as regards workmen'. This section opens with a eulogy of the social effects of the Act, observing, somewhat tritely, that the Workmen's Compensation Acts had conferred 'substantial benefits' on those workmen who were in a position to take advantage of them, and recalling how disadvantageous, before 1897, was the position of the injured workmen or of the families of workmen killed by accidents.

The Committee added that 'it was, perhaps, in some cases a matter of regret' that a claim enforceable by law was substituted for assistance voluntarily given, as interfering with 'very satisfactory relations between employers and employees'—as if the creation of legal rights for workmen and the imposition of a legal obligation on employers was itself an evil. The Committee, however, admitted, somewhat grudgingly, that 'it seems right and necessary to make by law systematic provision for relief from the consequences of accidents', but stressed the fact that a principal function and advantage of Workmen's Compensation was to create a degree of uniformity as regards the liabilities of employers to workmen, in regard to the compensation payable and as to the security for such payments. The Report emphasized<sup>1</sup> that the complaints brought forward on behalf of the workmen as to the working of the Act had been, generally speaking and with certain exceptions, directed, not against the adequacy of the sums paid, but rather against certain anomalies in the Act which had created a sense of hardship and injustice, and against the cost, delay, and difficulty of working the Acts in a minority of disputed cases.

This interpretation of the evidence is the more surprising in the light of the Holman Gregory Report (1922) and of subsequent experience, which points a very different moral. The Committee, and those who drafted the Report which they signed, seem to have been content to consider as 'exceptions' aspects which might usefully have

<sup>1</sup> Cf. *Report*, 1904, p. 36.

been analysed and brought within the ambit of general and fundamental discussion in the body of the Report. In the matter of litigation they seem likewise to have been inclined to draw superficial deductions from inadequate data placed before them, without inquiring into the existence of undisclosed deficiencies and evils. They cited one witness who claimed that 'if a man goes out in the morning to his employment and meets with an accident which he could not avoid . . . he should not suffer any loss at all from his weekly wages',<sup>1</sup> but added that 'only a few witnesses have complained of the general inadequacy of the Acts'. How many British workmen would, if called as witnesses, have described the protection afforded to them by the Acts as 'generally adequate'? The Report, after citing this evidence, once more emphasized that the principle of the 1897 Act had been to provide

such a degree of relief to dependants in the case of fatal accidents as shall afford reasonable assistance for maintenance. Again, in the case of total or partial incapacity, the provisions of the Act in fixing a maximum of half-wages obviously aim, not at complete indemnity, but at substantial relief. On the whole, however, there has been little complaint on the workmen's side of the maximum compensation fixed by the Act.

The Committee omitted to state the basis of this conclusion. A cursory examination of one of the Memoranda furnished to the Committee on compensation benefits abroad would have shown to them that in Germany, for instance, provision for compensation was far more liberal than in this country, and that there were, in the German system, provisions in regard to the 'expenses of cure', which found no place in English law. The whole German scheme of legislation and administration was, and still is, designed to provide, by a highly organized system of compulsory insurance and more or less compulsory treatment, the fullest practicable measure of relief from the consequences of the accident and, if possible, of cure. English law, on the other hand, required no more than a payment from the employer, and left medical or surgical treatment to be furnished by the workman himself or by the benefit club, if any, to which he belonged, or to such treatment, in hospital or otherwise, as might charitably be given to him.

Did the Report assume that, because no complaints in these respects reached them from the working-classes in England, the causes which had led to the grant of these benefits in Germany did not exist among workmen in this country?<sup>2</sup> The Committee, which sat only in London, and made no inquiries personally or by deputy in the provinces, admittedly relied largely upon replies from Workmen's Associations to a formal letter of inquiry sent out on behalf of the Home Office by

<sup>1</sup> Evidence of Secretary of Barge Builders' Union, A. 1179.

<sup>2</sup> Cf. *Report*, 1904, vol. iii, 1905, p. 23.

the Secretary to the Committee (Mr. R. R. Bannatyne). This letter contained eight carefully worded questions which, though important and relevant to the main features of the Act, did not seek to inquire how far the legal scale of compensation was adequate in the eyes of the workers. The questions asked related to the pecuniary burden imposed by the Act and its incidence to the proportion of cases settled out of court, to the commutation of weekly payments by payment of a lump sum, to the extent and effect of insuring against liabilities, to the effect of the Act on friendly and other benefit societies, to the position of old, weak, and partially maimed workmen, to the reasons for and extent of recourse to the Employers' Liability in preference to the Workmen's Compensation Acts.<sup>1</sup> The fundamental questions as to how the workman had fared in practice under the new law and whether, viewed from a general social angle, the condition of injured workmen and their families was satisfactory, only arose, if at all, quite indirectly. The inquiries addressed to the associations could hardly claim to have elicited what workmen would have answered, had they been asked, not whether they were, in general, satisfied with existing legislation, but what might be their present desires in regard to compensation for accidents.

That workmen put forward demands for the amendment and extension of the Acts, in terms which left no doubt as to their dissatisfaction, was amply proved by a memorial submitted to the Committee by the Mining Association of Great Britain, which showed that employers viewed 'with much apprehension' the proposals of the workmen's associations, who desired, for instance, so to alter the existing law that, instead of compensation being based upon the *actual wages earned by the person injured*, it should be upon the *earnings of workmen in the same grade*. The point had been embodied in a Bill introduced in 1903 by Mr. Joseph Walton, but subsequently dropped.<sup>2</sup>

A careful scrutiny of the evidence tendered to the Committee reveals, moreover, the existence (unmentioned in the Report) of dissatisfaction as to the rate of compensation paid. Mr. Jenkin Jones, from the Amalgamated Society of Engineers, claimed that it was unjust that two men, earning respectively £2 and £4 a week, should each be entitled to a maximum of £1 a week for total or partial incapacity. He argued that 'the man with £4 a week is entitled to more than the man who is in receipt of £2'. He also pointed out that £300 for death 'is not sufficient' in the case of more highly paid wage-earners.<sup>3</sup> Miss Sanger, representing the Women's Trade Union League, likewise advocated a higher sum than £300:

It is quite enough in the case of an elderly woman whose husband gets killed,

<sup>1</sup> Cf. *Report*, 1904, vol. i, p. 142.

<sup>2</sup> Cf. *ibid.*, vol. i, pp. 202, 203.

<sup>3</sup> Cf. A. 1948.

but in the case of a widow with several small children it is a small amount. I think there should be a wider range of compensation possible.<sup>1</sup>

The point was not taken up by the Chairman in the course of his examination of Miss Sanger, nor by any member of the Committee. Mr. David C. Cummings, representing the Boilermakers' and Iron and Steel Shipbuilders' Society, advocated

a minimum of not less than 50 per cent., because, after all, if a man is seriously injured, for a long period especially, 50 per cent. of his actual earnings, or at least the earnings of his trade, is not too great for him to subsist upon.<sup>2</sup>

Mr. T. Richards, the Secretary to the South Wales Miners' Federation, also urged that the £1 maximum should be abolished and replaced by a minimum sum to be paid, whatever the wage was, so that the workman should be entitled to a full half of his earnings.<sup>3</sup> The point was not taken up for discussion by Judge Lumley Smith, who questioned the witness. How little the Committee favoured proposals for higher payments became evident when they heard Mr. Steadman of the Barge Builders' Union, who advocated payment of full wages. 'Do you think the principle ought to be one of complete indemnity so that the man is just as well off, so that a man should suffer nothing in consequence of an accident?' asked Sir Kenelm Digby, intimating that the proposal was not one for serious discussion.

Mr. Steadman, whose evidence we have already quoted, had the same experience when interrogated by Mr. Barnes:

Q. 1812. You say the man ought to be as well off as when he was at work. The provisions of the Act now give the man only half pay. You do not want to go beyond the provisions of the Act at present, do you?

A. Yes, I should.

Q. 1813. Do you want full pay?

A. I do not think the man ought to be any worse off if he meets with an accident than he would be if he was able to work. Take a mechanic—supposing his money is £2 a week and he meets with an accident, under the present Act he gets £1 a week. That man may have a family, and even with £2 a week what is it when he has to bring up a family? Why should the standard of living of his family be lowered through something for which he is not responsible perhaps, but which is the act of providence?

To which the chairman, Sir Kenelm Digby, merely replied: 'Nor may the employer be responsible', evading the real point at issue, i.e. the scale of payment.

Lastly we may quote that of Mr. Robert Smillie, the President of the Lanarkshire Miners' County Union and a member of the Executive Committee of the Miners' Federation of Great Britain, whose

<sup>1</sup> Cf. A. 5344.

<sup>2</sup> Cf. A. 2410.

<sup>3</sup> Cf. A. 6176-7.

experience with social conditions of people affected by such contingencies as accidents and injuries was unrivalled. He explained<sup>1</sup> that in a very large number of cases where the workman had been only idle for perhaps three weeks, and under the Act was entitled to get 10s., or 12s., or 14s., the families 'suffered very severely, because of the loss of the earnings on the part of workmen'. He also advocated that the workmen 'should be paid full wages during incapacity',<sup>2</sup> but the Chairman again prevented any further discussion on the point by putting the further question:<sup>3</sup>

Is not that rather a premium on not going back to work when he can? . . . human nature is human nature, you know?

To which Mr. Smillie replied:

Well, I have a higher opinion of human nature than to think that.

The question and its answer reveal the abyss which separated the lawyer on one side of the table, with his roots deep in the law courts, from the man on the other side, in daily contact with his fellows.

Here, then, were cases of dissatisfaction of workers with the sufficiency of compensation, a subject on which the Report was silent, though they can be seen in the Evidence, which few have ever read. But the Committee could not wholly ignore the existence of dissatisfaction. They recorded that it had been 'suggested' to them<sup>4</sup> that the Employers' Liability Act should be repealed so far as concerns employments under the Compensation Acts, and that power should be given to the arbitrator under the latter Acts to give compensation under a higher scale in certain circumstances, *viz.*

1. Pain and suffering caused by the accident;
2. disfigurement;
3. extraordinary expense of cure;
4. wrongful act or default on the part of the employer.

Here was another suggestion of dissatisfaction with 'the sufficiency of compensation'. The Committee took a singular course in rejecting such a proposal. It pointed out that the Employers' Liability Act already contained such possibilities, ignoring the fact that it was the unsatisfactory procedure under this Act that had led to the introduction of Workmen's Compensation. They affected to believe that the realization of the suggested additional compensation under the Workmen's Compensation Acts would simply mean 'the re-enacting in another form of the Employers' Liability Act'. They added that these sug-

<sup>1</sup> Cf. A. 6443.

<sup>3</sup> Q. 6450, 6453.

<sup>2</sup> Q. 6449.

<sup>4</sup> Cf. p. 92.

gestions 'would, in a way, act oppressively upon the employer'; for 'If the workman could, in an ordinary proceeding under the Workmen's Compensation Act, get damages beyond the limit of the present statutory compensation, there would be the strongest incentive to the class of legal advisers, of whom complaint has been made, to shape their client's claim, in a very large proportion of cases, in such a way as to demand damages beyond the limit of the present statutory compensation'. The Report anticipated that the outcome of such measures would be an increase in litigation, 'so that evils of which employers, not without reason, have complained would be increased'.

In other words, the Committee was concerned only to discover whether such proposals, increasing the amount of damages to be paid to the workman, would have certain inconvenient legal effects in the state of the law as it then was, but did not attempt to discuss the social justification for such claims. We have here an instance of a situation which may be frequently observed when social legislation is under discussion. Complicated legislation militates against the passing of new social reforms, as every new reform may increase these complications, adding to the prospect of further litigation.<sup>1</sup> It is not to the credit of the authors of the Report of 1904 that they should have avoided discussion of these great problems, merely pointing out the legal difficulties attendant upon measures of redress. Existing defects of Workmen's Compensation would be far easier to put right now had their existence been recognized and remedies attempted earlier. But, as our analysis shows, the Committee which reported in 1904 was satisfied, from the outset, to leave unchanged the fundamentals of the Acts of 1897 and 1900 and to deal merely with certain current defects.

In this branch of its investigation the Committee brought out several important points. It was certainly to the disadvantage of workmen that some small employers could not be relied upon to meet their liabilities under the Act, and this danger would be greater when business was bad. A weakness of the Act was that the personal liability of the employer, and the risk of possible insolvency, could not be avoided. The workman entitled to compensation was a creditor whose only preferential right was, by Section 5, to any sum, applicable to the compensation in question, due to his employer from an insurance company. The workman had no claim against the insurance company itself, or any guarantee for payment of compensation. Nor was the employer then, nor is he yet (except in the mining industry), bound to insure, though it is presumed that self-interest will induce him to do so. The Report fully recognized the precarious position of the

<sup>1</sup> Cf. Wilson and Levy, *Industrial Assurance*, pp. 412 and 415.

workman.<sup>1</sup> Proposals had been made by witnesses for additional preferential rights,<sup>2</sup> but the injured workman would still remain a creditor of the employer. The Report recognized that this was 'a condition inseparable from the principle on which the Act is based', and there was, of course, no idea in their minds of modifying these principles.

The question did not, however, end there. The insurance office, whether on a commercial or mutual basis, might itself become insolvent, and, in such circumstances, the employer as well as the employee would suffer. The Committee viewed with alarm the competition prevalent among insurance offices in this new and lucrative branch of business,<sup>3</sup> which had led 'even experienced companies' to undertake unknown risks; 'what is to be expected if the prospect of a great access of business brings about the establishment of new companies eagerly competing for the custom of the classes of employers who will for the first time be brought under the liabilities of the Act?'

The 'danger of insolvency' of the employer was 'very real', and had always to be borne in mind. The Committee strongly recommended statutory regulations in respect of the insurance companies undertaking Workmen's Compensation business—a point which had become the more acute, because any further extension of the Workmen's Compensation Acts to secondary and financially less stable branches of industry than those to which the Act until now extended, might have increased the danger. Several witnesses noted that other countries, including the U.S.A., France, and Canada, had long ago introduced restrictive measures unknown in England.<sup>4</sup> The suggestions made by the Committee were, to some extent, embodied five years later in the Assurance Companies Act, 1909, which conferred very limited powers of supervision upon the Board of Trade.

We deal elsewhere with this matter; it suffices here to state that this Consolidation Act re-enacted the provision of the Employers' Liability Insurance Companies Act, 1907, which was passed to discourage the promotion of undesirable companies for the transaction of this class of business, and required, as the Committee of 1904 had proposed, annual returns in sufficient detail to show the actual position of all existing companies. The policy pursued since then has been to apply the main principles of the Life Assurance Acts with such modifications as were found necessary in the case of companies transacting Employers' Liability business.<sup>5</sup> New assurance companies were required by law to deposit £20,000; a separate revenue account and a

<sup>1</sup> Cf. *Report*, 1904, p. 37.

<sup>2</sup> Cf. *Evidence*, Q. 2226-8 and 5161.

<sup>3</sup> See p. 37-8.

<sup>4</sup> Cf. *Report*, 1904, p. 123, further letter by the General Accident Corporation Ltd., p. 157, and Appendix IV to the *Report*, *passim*; also Q. 8058. <sup>5</sup> Cf. *Report*, 1922, p. 12.

separate fund were enjoined, as also strict and detailed regulations regarding balance sheets; statements showing claims experienced over a period of five years were required, and regulations instituted dealing with the winding-up of assurance companies. In drawing attention to the need for such legislation, the Committee emphasized that, even if the irreducible minimum was enacted, the danger arising from the insolvency of the employer would not be completely met, for 'there is no obligation upon him other than that of enlightened self-interest compelling him to insure and, as has been pointed out, there are many employers, and there are likely to be more if the Act is extended, who, through ignorance, or recklessness or inability, will not insure or, if they insure at first, will not keep up insurance'.<sup>1</sup>

This conclusion coloured the general attitude of the Report towards existing legislation. 'This difficulty', continued the Committee, 'and, indeed, many others to which the present system gives rise, could only be solved by substituting for the personal liability of the individual employer the security of a fund the solvency of which was assured. How such fund is to be provided, how employers are to be induced or compelled to insure their workmen, and how the workmen are to be given direct recourse to such a fund, are problems which may have to be faced in future....' Coming a step nearer to the underlying reality, the Committee concluded as follows:<sup>2</sup>

Many witnesses have suggested<sup>3</sup> that some system of national insurance should be established which would relieve the employers from all personal liability except that of providing the necessary funds. Any such proposal would require and will doubtless receive the fullest consideration from the legislature. It may be that the State should establish or regulate a system of insurance which would provide an opportunity for every employer and for every workman complete security. It may be that a state policy might protect the employer from all personal liability except the payment of the premium. It may be that ultimately some form of compulsion might be adopted requiring all employers to insure their workmen in some association under state regulations. It may be that under such a system, larger benefits than those given by the present Act might be provided for, but in that case it would follow that some contribution, proportionate to the increase of benefit, should be made by the workman to the insurance fund. These and similar questions are probably in prospect. But it would be premature and beyond our commission to discuss them. We can only indicate that, beneficial as we believe the legislation of 1897 to have been on the whole, we do not think it can be regarded otherwise than as a step in the direction of a more comprehensive system.

<sup>1</sup> Cf. *Report*, 1904, p. 123.

<sup>2</sup> Cf. *ibid.*, pp. 123 and 124.

<sup>3</sup> Cf. the following answers to Questions: 2226-9, 2430, 2433, 2469-74, 2480-5, 3390-2, 5633, 7283-9, 7312-15.

These were the concluding words of the Committee's Report. For those who were willing to hear they were explicit enough. Mr. G. N. Barnes, in his capacity as a member of the Committee, did hardly more than repeat them in his special Memorandum: 'I do not believe, however, that the principle of personal liability is one which can be effectively applied—especially in the case of small employers—unless accompanied by compulsory insurance. I am therefore in favour of compulsion, provided insurers are offered national insurance as an alternative to that with the ordinary Companies.' He left no doubt in which direction his sympathy lay in regard to the two decisive and entirely opposed principles upon which, in the international world, Workmen's Compensation was carried on: i.e. the principle of the personal liability of the employer to compensate the workman, but with the right of choice as to which way, if at all, he wished to insure against this risk, or that of compulsory insurance. While unwilling or unable to express a definite view, the Committee were in no doubt as to which alternative they would choose.<sup>1</sup>

Where, as in Germany, the law has adopted the principle of compulsory insurance, the workman has the security of the funds of an assurance society, whose solvency is carefully secured by legislation and is usually guaranteed by the State.

A Memorandum annexed to the Report dealt with Workmen's Compensation shaped on the German plan or upon similar principles by other countries such as Austria (1888), Norway (1886), Finland (1895), Italy (1898, with modifications), France (1893), Holland (1901), Belgium (State insurance partially adopted in 1903). The fight for compulsory insurance was still going on in other countries; Switzerland altered its Constitution in 1889 in order to permit the introduction of compulsory insurance. The Memorandum left no doubt that the example of Germany had been followed by 'the majority of European countries', while the U.S.A. and British self-governing colonies had not yet progressed beyond the standard set by England.<sup>2</sup>

British politicians, wishing to study the deficiencies of the English system in its fundamentals, might have found, and may still find, ample material in this inquiry, which was, however, almost ignored in the public press and in the parliamentary debates which followed. Indeed, the argument for compulsory insurance was not yet at stake at all. This is doubtless why no attention was paid to another point bearing upon the expediency of replacing 'private' insurance, apart from the concomitant risk of insolvency by a new system. The evi-

<sup>1</sup> *Memorandum on the Laws of Foreign Countries and of British Possessions relating to the rights of Workmen to Compensation for Injuries by Accidents. Report, 1904, vol. iii, App.*

<sup>2</sup> Cf. *Report, 1904, vol. iii, pp. 12-14.*

dence before the Committee showed that even if insurance offices, mutual and commercial, could have been made safe, and employers induced or compelled to make use of them, the interests of the workmen would still be inadequately protected, for the business interests of the offices were, in general, directly opposed to that of the workmen. A strong case against leaving the matter to insurance companies could have been made. In this connexion the following statements merit particular attention. Mr. Alfred Henry Ruegg, K.C.,<sup>1</sup> called the attention of the Committee to the fact that insurance offices were pressing injured workmen to commute weekly payments for an inadequate sum:

In some cases I think some coercion is sometimes exercised, I think particularly where the smaller insurance companies are concerned. The insurance companies have men called claim settlers who go round—they are smart young men and they think they have done a very commendable thing when they have settled for a small amount.<sup>2</sup>

The Chairman himself mentioned a case of a widow who was alleged to have been 'bullied' into accepting £50 for an award worth a great deal more.<sup>3</sup> Some county court judges, added Mr. Ruegg, were 'speaking strongly' about these 'damnable conditions'. They are, indeed, still doing so. The authors of this book, who in their investigation into industrial assurance have criticized in detail what the representatives of insurance offices claim to be the 'splendid service' rendered by their agents to the working-classes, are not surprised to find in the observations of Judge Ruegg another illustration of the doubtful service to society of this class of 'social servant'.

Mr. David C. Cummings, for the Boilermakers' and Iron and Steel Shipbuilders' Society, gave another illustration of the way claims might be handled by the insurance companies:

The insurance companies have not the sympathy with the workman that even his own employer has in the matter. They have . . . accepted certain risks and by many methods they do their best to get rid of it by vexatious delays and other means, especially if the man is in the position not to be able to resist it to some extent.<sup>4</sup>

He gave the illustration of a young man who in his apprenticeship had injured one eye slightly; the subsequent loss of the other eye totally incapacitated him for following his employment. The 'insurance company adopted a method of bullying him at his house, until he got in quite a nervous state, and I had myself to go and in turn bully the insurance company's agent before the settlement was arranged'.

<sup>1</sup> See p. 74. <sup>2</sup> Q. 1372. Such cases are, in my experience, not unusual to-day. A.T.W.

<sup>3</sup> Q. 1373.

<sup>4</sup> Cf. *Report*, 1904, A. 2353-4.

Another case was reported to the Committee by Mr. J. N. Bell, the representative of the National Amalgamated Union of Labour:<sup>1</sup>

I have mentioned here, in my précis, speaking of the difficulties which are placed in our way by insurance companies, the attempts which have been made to reduce the amount of compensation, and so on, and that there are a great deal of petty annoyances given. A young man came to consult me about his position. The young fellow is totally disabled, and will never be able to work again, that is quite clear, and he is getting 13s. 6d. a week as compensation. He has been continually pestered by agents of the insurance company as to whether he does not think he will be able to work and so on. He told me that he was writing a letter to his sister one day when the agent came in and wanted to know if he was not doing some clerical work and if he did not think he could knock off compensation. We have a good deal of that kind of thing.

The Committee seemed to attach very little importance to such complaints. 'How would you prevent it?' asked Judge Lumley Smith, and the witness replied: 'It might be that if the plan that I have suggested, namely, the provision of a national fund worked by impartial people, were to come into effect there might be a little less of that sort of thing.' But again, the discussion of such possibilities would have involved examination of the expediency of changing the principles on which Workmen's Compensation rested in England, and such discussion was no part of the Committee's plan.

As final evidence of the way in which this evil had permeated the system of Workmen's Compensation, without being further investigated by the Committee or dealt with in their Report, we may cite part of the answer<sup>2</sup> given by the Amalgamated Society of Saw Mill Sawyers, Wood Cutting Machinists, and Wood Turners, to the Home Office questionnaire:

Insurance Companies, in their eagerness to settle various claims made upon them for as small a sum as possible, trade upon the ignorance, and in the majority of cases, upon their knowledge of the inability of workmen, owing to poverty, to prosecute claims, and thus, speaking in general terms, the effects are detrimental to the interests of the injured workmen and their dependants, and do much to minimise the undoubted benefits of the Acts. After reporting the accident to a workman, the employer is simply a figurehead; the Insurance Company taking full control of the case. They do not leave a stone unturned to evade or at least reduce their liability. Their agents will seek out the man while he is still in hospital, and suffering from the first shock of the accident, with a view to securing a settlement for the smallest possible sum. In one typical case £5 was offered to one of our members by way of settling his claim, although his injury was of such a nature that he could not bend the fingers of his right hand eighteen months after the date of accident. These agents call upon the family and play upon their fears, so that their influence may be brought to bear on the man, and in several

<sup>1</sup> Cf. *Report*, 1904, A. 3416.

<sup>2</sup> Cf. *ibid.*, vol. 1, Appendix, p. 153.

instances even their examining surgeon has used his influence to get the man to settle for a sum entirely inadequate to the loss sustained. As soon as the wound is healed or the man can get about, they get the employer to restart him at a higher rate of wages than he can earn, and to secure the termination or diminution of the weekly payments, in order to reduce the value of the same, with a view to commuting for a less sum. Owing to the above practice of insuring having now become an established business, and the matter of the claim being *de facto* one between the workman and the insurance company, I consider that the Acts should be better safeguarded against the sharp practices by so many insurance companies . . .

Commander Smith, the Inspector of Factories whose evidence we have already referred to (p. 77), observed in this connexion :

There is one point which strikes me, and that is the question of whether anything could be done to prevent agents of the insurance company, where people are injured, from this kind of practice. They go to a man who is ill in bed, and whose wife hardly knows which way to turn for food or medicine or anything else, and talk to the man about compensation and so on and, under these conditions, very frequently get him to sign away his rights. He takes some merely nominal sum, whereas if he had come before the County Court Judge he would have had a substantial amount.

In conclusion, we may cite the evidence of Mr. (later Sir) C. E. Troup, who read a letter addressed by His Honour Judge Bradbury to the Home Office,<sup>1</sup> which included the following passage :

I find that very strong pressure is applied in many cases to compel injured workmen to accept a lump sum in lieu of the weekly payments provided by the Act. . . . These agreements, I have good reason to believe, are in many cases wrung out of men by persistent bullying and badgering on the part of the local agents of insurance companies, the men becoming in time worn out by the continuous pressure put on them. . . .

The cumulative effect of the foregoing evidence constitutes a strong case against the whole system of private insurance; and goes far to negative the conclusion of the Report, placed at the head of this section,<sup>2</sup> that 'in general' there was no complaint against the sufficiency of compensation. The methods successfully adopted by the insurance offices in order to reduce the amounts payable by them in settlement of justified claims should have been regarded by the Committee not as exceptional, but as fundamental defects of the system. The Committee were content to make recommendations, embodied some years later in (still existing) legislation,<sup>3</sup> to counteract 'oppressive settlements for lump sums', but could not recommend, as suggested by Judge Bradbury, that every settlement by agreement should be brought within the cognizance of the county court upon its merits. The Committee limited themselves to proposing that the obligation

<sup>1</sup> Cf. Mr. Troup's evidence, A. 358.

<sup>2</sup> Cf. vol. i, p. 36.

<sup>3</sup> Cf. *Report*, 1904, p. 89.

to register, and the relative procedure, should be more stringent, and that no unregistered agreement, express or implied, should exempt the employer from liability to subsequent weekly payments. We shall note later the actual effect of such amendments. Without anticipating our conclusions we may observe that the evil of settlements by pressure has not abated. On the contrary, it appears to be inherent in the system and, in spite of attempted reforms by later legislation, is still rampant.

The policy of the Act is undoubtedly to prevent workmen from making improvident settlements but, in the absence of an express provision that a workman shall not be entitled to surrender his right to make a claim for compensation under the Act in consideration of a lump sum payment, there appears to be nothing to prevent it.<sup>1</sup>

The Committee might well have foreseen these conclusions. A patch-work reform appeared to be its only recourse if it strictly adhered to its terms of reference. The result has been that such complaints are repeated in almost the same words to-day. By way of illustration, we may quote the following passage from a leaflet of 1933:

Of course, he may be asked if he would like to settle his case. He has no idea what amount he ought to get; he knows nothing of his rights, and he is negotiating with an experienced representative of the insurance company. His case may be worth, say, £200—but he is getting more and more into debt. His rent is in arrears, his wife and his children are like the hungry sheep—they 'look up and are not fed'. The insurance company offers him £100. Think of it! £100 to a starving man . . . John Smith can't see that in twelve months £100 will be gone and he may still be unfit for work. He may say 'Make it £125', and it's done. The Registrar of the County Court has to be satisfied that £125 is adequate, but that is quite often not a bar to the workman getting too little.<sup>2</sup>

This was written just thirty years after the publication of the 1904 Committee's Report which revealed the same conditions in regard to the policy of insurance companies. In quoting it we must not be understood as endorsing it as a valid criticism of the existing system. The weakness of the position is that whenever the Court expresses a view, as it is bound to do under Sections 23 and 24 of the Workmen's Compensation Act, it is liable to be met with the request for leave to withdraw the agreement so that a Declaration of Liability may be filed.

It will be remembered that, in cases under the Fatal Accidents Acts and where the plaintiff is a widow or any of the plaintiffs are infants, the approval of the judge who would try the case must be obtained.

<sup>1</sup> Cf. Adshead Elliot, *The Workmen's Compensation Act*, 7th ed., 1915, also Walter F. Dodd, *Administration of Workmen's Compensation*, New York, 1936, p. 63.

<sup>2</sup> Cf. *John Smith has an Accident. A case of Workmen's Compensation*. Issued by the General Council of the Trades Union Congress, 1933, p. 6.

We do not underrate the importance of statutory enactments during those years nor the invaluable services rendered to injured workmen by the registrars and judges of most county courts. But the fact remains that the old complaints persist and are voiced by none more loudly than by county court judges.

Complaints as to the policy of insurance offices in regard to Workmen's Compensation were also made in another direction. The Amalgamated Society of Mill Sawyers mentioned that they had cases nearly every week of men who were discharged as soon as their employer came to know that they had been injured by previous accidents (see note on page 100).

This constitutes a crying injustice in the Acts, for when a man is injured, and his case is being heard in Court, the insurance companies, through the employer, always argue (and that unsuccessfully) that their liability ends when the man is fit to resume work, but when the man so injured attempts to work, the employers look askance at him, and even if he does get a start, he is again discharged at the earliest opportunity. The injustice is evident. . . .

A typical case, cited by Mr. Copley<sup>1</sup> of the National Amalgamated Union of Engineers of Great Britain, was that of a shunter who lost his right leg at work and, having been supplied with a cork leg, was offered employment as a locomotive driver at a higher wage, and was so employed for two years. Then the unbelievable happened. The insurance company stepped in, and 'refused to be liable any longer for any compensation if he was kept in this employment. . . . He got fourteen days' notice, and now he is practically on the street—with one leg and without employment.' Mr. Copley expressed the view that a remedy could only be found in a proper system of 'National Insurance'. The Report quoted other and similar cases to the same effect.<sup>2</sup> Mr. Dawson, member of the Committee of the Master Cotton Spinners' Association, asserted<sup>3</sup> that the insurance companies insisted that only suitable men should be employed, which, in effect, tended to prevent the employment of old men (see note on page 100). A manager of the Accident Department of the Commercial Union Assurance Company denied this<sup>4</sup> but, rejecting his testimony, the Report, in the face of the overwhelming evidence to the contrary, declared:

The evidence has led us to the conclusion that the Workmen's Compensation Acts have largely increased the difficulties of old men finding and retaining employment.

As to partially maimed persons the Report quoted in full the evidence of Mr. Taylor, Secretary to the Cotton Trade Insurance

<sup>1</sup> Cf. *Evidence*, A. 2977 and 3025; also Ness Edwards, *History of S. Wales Miners' Federation*, 1938, vol. i, p. 38.

<sup>2</sup> A. 6900-3.

<sup>3</sup> Cf. *Report*, pp. 38-40.

<sup>4</sup> Q. 5725-38.

Association,<sup>1</sup> who had stated before the Committee that in 'a great many cases' partially infirm people were dismissed by employers who feared liability for accidents. 'I gave instructions last week', he added, 'to stop a man of only fifty years of age who was suffering from varicose veins in his legs. If this man . . . knocked a leg against some machinery in his mill he might easily bleed to death, and we should be liable for it.' He gave other instances which revealed like tragedies. The Committee, though apparently anxious not to attack the British system of social insurance, went so far as to say:

If Mutual Insurance Associations feel themselves compelled to take action of the nature described by Mr. Taylor, it is not a matter of surprise if the insurance companies adopt even more stringent measures.

In face of all this evidence the Committee further hinted at 'the possibility of the ultimate substitution of the principle of compulsory insurance for that of personal liability'. But it was only a faint hint; there was no attempt to elaborate the 'possibility'.

6. The Committee also discussed 'Conditions affecting the Working of the Act'. Under this section certain agreements between Colliery Owners and Miners' Associations were explained and recommended for further extension. They examined the position of small employers who 'through ignorance or short-sightedness' were unwilling to insure, and in regard to such conditions in a large portion of the industries of Sheffield commended the view of Commander Smith that 'some well-thought-out system of compulsory insurance would secure everything to the workman at a very small tax to the employer'.<sup>2</sup>

The Committee under this head came to the conclusion<sup>3</sup> that the 1897 Act was most unsatisfactory and least effective where labour is unorganized and the workman himself is obliged to seek legal assistance, that the tendency was aggravated when the workman was in the employment of a small employer, and that the system was least appropriate in the case of a casual labourer who has no fixed or settled occupation, but merely picks up jobs where he can. The Committee proposed a long list of amendments arising naturally from the criticisms which we have attempted broadly to analyse. Some of them we have already discussed when dealing with the particular deficiencies of the 1897 Act; others will be referred to in our next chapter.

They scrutinized existing grounds for compensation and proposed extensions; the grounds on which compensation might be refused were analysed with a view to amendments, as also the amount of compensation to be paid and the methods of payment. The termination and commutation of payment was criticized and proposals for

<sup>1</sup> A. 4914.

<sup>2</sup> Cf. A. 7244.

<sup>3</sup> Report, p. 44.

reforms made; the relation of remedies under the Workmen's Compensation Acts to those at Common Law and under the Employers' Liability Act also came under review, although the Committee held to the view that the tripartite remedies open to the workman should remain, and the Common Law and the Employers' Liability Act should be left as they stand.<sup>1</sup> Further points which the Committee analysed with a view to making recommendations were the machinery for carrying out the Act, Arbitration, Medical Referees, Jurisdiction of Courts of First Instance and of Appeal, Statutory Schemes (contracting-out), the conditions of Workmen's Compensation existing in agriculture, and the categories of persons entitled to receive and liable to pay compensation. A separate and elaborate part of the Report contained proposals for the extension of the provisions of the Act of 1897 to other employments and for cognate legislation.

We have now shown how the existing Acts appeared to witnesses, to expert administrators, and to the Committee of 1904, and the principal complaints made. Some were due to the incompleteness of the—avowedly tentative—original legislation. But the Committee discovered others: the amount of litigation was great and excessive; the actual compensation paid to the injured workman or, in the case of his death, to dependants, was undeniably inadequate and, even so, only too often not obtained. Legislation on this point was overdue. The ignorance of the workman, as well as his financial handicap as compared with that of his employers, was greatly to his disadvantage. He might be pressed into agreements he hardly understood which might lead him into further distress. The problem of accepting a lump sum instead of weekly payments had already become acute. The whole interpretation as to the place of accident needed revision. The English law had carefully safeguarded the 'liberty' of both parties. There was no compulsion to insure; everything rested upon the personal liability of the employer. The Committee's findings clearly showed the ineluctable price of this freedom. One-sided 'liberty' on the part of employers led them to evade their liabilities under the Acts when they could. Old and partially maimed workmen were the main sufferers, employment being denied to them as being too near the accident margin. On the other hand, there was nobody who would, simultaneously with his responsibility for compensation, undertake the task of making more elaborate attempts to prevent accidents. The gap between accident-prevention and insurance against compensation was revealed. All these matters clearly demanded a full revision and an extensive overhaul of existing legislation. In proposing, point by point, the respective reforms which appeared desirable, the Committee

<sup>1</sup> Cf. *Report*, p. 93.

in its Report strictly kept to the principles and fundamental methods on which legislation had been hitherto based. But between the lines and at certain points another conclusion seemed to emerge. There could be no doubt that the whole system of personal liability was arousing apprehension, and the reports made to the Committee as regards continental systems of compulsory insurance and state organization might have sufficed to arouse doubts as to the value of the English system. The Committee more than once hinted that the ideal of Workmen's Compensation was to be sought elsewhere than in the English tripartite system, but their Report could only touch the fringe of these fundamental matters. It is to their credit that, 'not having received the promises', they nevertheless 'perceived them afar off'.

#### Supplementary Notes (see p. 97)

I. There is always a risk to the workman of an insurance company repudiating its liability in the event of its transpiring that the employer had failed to disclose a physical defect on his Insurance Proposal Form.

A foreman painter at Hitchin, earning £4 a week, commenced Arbitration proceedings in respect of the loss of an eye, he having fallen over a pot of paint on the level, and detached the retina of the eye. He admitted under cross-examination that he had had a previous accident, caused by a fall from a lorry on which he was riding, quite properly, to his work. To the amazement of every one, he explained that this accident had caused the detachment of the retina of the other eye, and without any one knowing anything about it, he was standing in the witness-box a totally blinded man.

The insurance company then took the point that there was a physical defect which the employer had not disclosed, and they, therefore, were not liable. The man's employer was a firm of two brothers in partnership, both of whom had become bankrupt, so that the workman looked like receiving nothing. The insurance company eventually settled the case satisfactorily to both parties.

II. The Compensation is based on a workman's earning capacity. Cases sometimes occur where the employer has reinstated a workman at his pre-accident wages, or higher, though he was physically incapable of performing his normal duties.

In such cases the employer and the insurance company work together. When lump-sum claims are filed, the Registrar is necessarily influenced by the man's present earning capacity. It is very misleading, therefore, for the workman to be receiving his pre-accident wages, when there is no mention of the surrounding circumstances.

The earning capacity is a factor to be considered in assessing the lump sum, and the Court may find itself working on false premisses.

Cases sometimes occur when, after an agreement has been recorded, the workman has been dismissed in the ordinary course of reduction of hands. This leaves the feeling that the injured workman may be among the first to go, although it is difficult to obtain proof.

## CHAPTER V

### THE WORKMEN'S COMPENSATION ACT, 1906

'... if a servant, under his master's command transporting a sum of money, be assailed by robbers and die in many irreconciled iniquities, you may call the business of the master the author of the servant's damnation.'

SHAKESPEARE, *Henry V*, Act iv, Sc. i.

THE Workmen's Compensation Act, 1906,<sup>1</sup> was a direct outcome of the parliamentary inquiry of 1903-5. Most of the recommendations then made were, with a few reservations, adopted, and the tenor of the debates in both houses shows that opposition to many features of Workmen's Compensation, so strong in 1897, had abated, opening the way to further progressive measures.

Arthur Shadwell, a contemporary writer of high authority, refers to the Act as having 'introduced some entirely new principles in labour legislation'.<sup>2</sup> This is an over-statement; it provided for new applications of old principles, but introduced few, if any, fresh conceptions. Yet it remains a landmark in the history of British Workmen's Compensation legislation, which it modified,

- (1) *objectively*, by extending the scope of existing legislation to a wider field, and
- (2) *subjectively*, by enlarging the rights of persons covered by the Acts, increasing the sums payable, and providing further security for payment. It is important to maintain this distinction in considering the changes then made and now in contemplation.

In the first category, several changes of prime importance were made. The Act of 1897 applied to a limited number of industries and occupations, for it assumed that persons employed in certain trades were exposed to special risks incidental to their employment and that, since these risks were incurred for the benefit of the employer, it was for him to provide compensation for injuries incurred.<sup>3</sup> Certain occupations were scheduled accordingly and to them alone the Act applied. The new Act extended to all industries and occupations except a few specifically exempted.

As the restrictions of the Workmen's Compensation Acts of 1897 and 1900 in this respect had now disappeared, the legal decisions defin-

<sup>1</sup> 'An Act to consolidate and amend the Law with respect to Compensation to Workmen for Injuries suffered in the course of their Employment' (6 Edw. 7, c. 58). It received the Royal Assent on Dec. 21st 1906.

<sup>2</sup> Cf. Shadwell, loc. cit., p. 679.

<sup>3</sup> Cf. Shadwell, loc. cit., pp. 680-1.

ing the employments to which those Acts applied went with them.<sup>1</sup> This was indeed a substantial extension of the scope of the legislation. Compensation could now be claimed by domestic servants, shop assistants (for whom Mr. Joseph Chamberlain pleaded eloquently<sup>2</sup> in the House of Commons), clerks, sailors, hospital staffs, theatre staffs, church staffs, persons employed by the State, the municipality, or any other body, musicians, teachers, nurses, and others, although some of them might run no greater risks than their employers, and no more than many people run every day. The old Acts covered about 7,250,000 workmen,<sup>3</sup> the new enactments applied to about 15,000,000.

The extension to seamen,<sup>4</sup> subject to certain minor provisions, was of particular importance. The only class of seamen excluded were 'such members of the crew of a fishing vessel as are remunerated by shares in the profits on the gross earnings of the working of the vessel', words which led to much litigation, in cases where the crew was paid partly in wages and partly by a share of earnings of the vessel, till the point was finally settled in the House of Lords.<sup>5</sup> This was a great step forward, for in Mr. Asquith's Employers' Liability Bill of 1893 (see pp. 57 sqq.) the expression 'workman' included every person working under a contract of service or apprenticeship on board a British ship, but was not to include 'members of a crew of a fishing vessel where such members, though not part owners, are joint adventurers with the owners'. The Committee of 1904 had paid particular attention to the position of seafaring men and, in this particular case, urged the need of 'some compulsory system of insurance which would provide the intended compensation with complete security'.

<sup>1</sup> Cf. Ruegg and Stanes, *The Workmen's Compensation Act, 1906, 1922*, p. 5. The exceptions were:

- (a) Persons in the naval or military service of the Crown.
- (b) Police.
- (c) Persons employed otherwise than in manual labour and earning more than £250 a year.
- (d) Out-workers, i.e. persons working on material furnished by the employer but not on his premises (putting-out system).
- (e) Members of an employer's family living in the house.
- (f) Persons casually employed for some purpose not connected with the employer's trade or business.

<sup>2</sup> Cf. *Debates*, 1906, vol. 154, 4th series, pp. 886 sqq.

<sup>3</sup> Cf. *Report*, 1904, vol. i, p. 111, and Shadwell, loc. cit., p. 681.

<sup>4</sup> Section 7 extended the protection of the Acts to 'masters, seamen and apprentices to the sea service and apprentices in the sea-fishing service, provided that such persons are workmen within the meaning of the Act, and are members of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner, or (if there is more than one) the managing owner, or manager, resides or has his principal place of business in the United Kingdom'.

<sup>5</sup> In *Costello v. Kelsall*. Cf. Ruegg and Stanes, loc. cit., p. 42.

Much controversy was encountered when witnesses were heard. Mr. Havelock Wilson, on behalf of the seamen, pressed for the unconditional admission of the seamen to the full benefits of the Act. Shipowners claimed that the provisions of the Act were not, and could not be, adapted to their industry, owing to the prolonged absences of ships from home ports, and possible frequent changes in the crew, which would, in most cases, preclude the production of essential witnesses. They could exercise no active personal control over either the vessel or crew after the ship had sailed, and during the whole voyage it was frequently in peril from 'acts of God' beyond human control. If it were necessary to insure seamen against accidents due to 'act of God', the burden should be borne by the State.<sup>1</sup> Certain limitations to the application of the Act in respect of small industrial units were to be expected. The Committee of 1904 directed attention to the difficult cases of 'Small Workshops', and proposed that the limit should be the regular employment of not less than five persons.<sup>2</sup> The Act of 1906 went farther, and included workers employed by small master employers as well as home workers. Such were the extensions of the Act in the objective field of application.

The advance made in regard to the subjective position of the injured in respect of his claim for compensation was not less striking. Here again it is necessary to draw a clear distinction between different types of cases. The injured workman, or the family left destitute by the death of a wage-earner, is confronted by several important and distinct conditions precedent to a legal claim. The nature of the injury itself (we expressly avoid from now onwards the word 'accident', as diseases were now included, except in cases where claims might not be solely due to accident) had to be most carefully considered in order to ascertain whether it fell within the scope of the Acts. The amount of compensation due, if any, depended upon another category of facts such as the statutory minimum period of incapacity, the range of relatives entitled to compensation, the amount of the compensation itself, and the permissible methods of its payment. In considering the problem under these heads we do not follow the sections of the Act itself; we are pre-

<sup>1</sup> Cf. *Report*, 1904, *Evidence*: 8086-335, 8336-405, 8406-47, 3115-321 (Havelock Wilson), 8219-22, as also Appendix XXXI to vol. i.

Certain provisions as regards compensation to seamen were made in the Merchant Shipping Act, 1894 (57 & 58 Vic., c. 60, s. 7), and the Report of the Committee suggested extending certain sections of this Act by provisions taken from the principles of Workmen's Compensation (*Report*, i, paras. 116-17), but this was merely a matter of legal form, the decisive factor being that the position of seamen and fishermen was now, subject to certain modifications, assimilated to that of industrial or other workers as regards their claims for compensation.

<sup>2</sup> Cf. *Report*, p. 119.

senting it as it must appear to the workman himself who has to ascertain whether his injury entitles him to compensation and, if so, to how much.

As to the first point, the most striking change brought about by the Act of 1906 was undoubtedly the inclusion of diseases as 'notional accidents'. This extension of the Act was not derived from the principle that the workman should be protected against any bodily damage in connexion with his employment,<sup>1</sup> but as the consequence of legal reasoning rather than of social expediency or justice. Lawyers had argued, and judges had held, that a disease might in certain circumstances be regarded as the direct outcome of accident.

It is surprising to note, in retrospect, how long elapsed before the nature of the problem was realized, and how tardy were governments in attacking it. Ramazzini had long ago drawn attention to it; the Factories Inquiry Commission of 1833 had conclusively established that impure air, fatigue, deprivation of sleep, constant standing leading to swelling of the feet even of young workers, and unnatural postures required by certain forms of industrial work, often led to serious, permanent, and incurable diseases. The Reports of 1861 and 1862 in connexion with an inquiry into the death-rates from lung diseases in certain occupations had led Sir John Simon, the famous Medical Officer of the Privy Council, to conclude that 'the canker of industrial diseases gnaws at the very root of our national strength'. The firstfruit of his pioneer activities was the Factory Act of 1864, under which were enacted, for the first time, regulations in respect of the ventilating of factories so as to render harmless gases, dust, or other impurities generated in the process of manufacture. If a Medical Inspector had been on the Staff at the Home Office at that time, preventive measures would probably have been taken far sooner. But the first official reference to lead poisoning in the Chief Factory Inspector's Report, headed 'Occupations Injurious to Health', is dated 1879.

In 1892 Dr. Arlidge disclosed<sup>2</sup> the great dangers to health inherent

<sup>1</sup> The case of *Fenton v. Thorley* (A.C. 443) of 1903 was the leading case in this field. A man who ruptured himself by being obliged to use more than ordinary exertion to turn a wheel which had stuck owing to the escape of glutinous fluid was held to have been injured by 'accident' within the meaning of the Act of 1897. The leakage of fluid was the unexpected event which caused the extra exertion, and gave rise to injury. The bench on this occasion defined the word 'accident' as 'an unlooked-for mishap or untoward event which is not expected or designed'. On the strength of this decision the Court of Appeal subsequently held (in *Higgins v. Campbell*, and *Harrisons Limited and Turvey v. Brintons Ltd.*, [1904] 1 K.B. 328) that the introduction into the system of the poison of anthrax caused by the entry of the bacillus of anthrax on an exposed part of the neck was an 'accident', the fatal termination of which entitled the defendants to compensation. This was the start of the 'disease' problem.

<sup>2</sup> Arlidge, *Diseases of Occupation*, 1892.

in the manufacture of earthenware by certain processes. Special precautions to be observed in the Earthenware and China trades were drafted by the Home Office in 1892, but did not meet with the general approval of the manufacturers in the Potteries, whose opposition was strong, and some years elapsed before both sides agreed upon a code. The reluctance of operatives to take reasonable precautions was not easily overcome, and, as always, the utmost vigilance by employers, managers, and foremen was required to compel workers to take the simplest precautions against hidden perils of their employment. In this and in other matters, such as phosphorus and arsenical poisoning and infection by anthrax, the issue of official regulations was preceded by tedious medical inquiries which seldom achieved more than to record agreement upon facts and remedies upon which informed medical and expert opinion had long been unanimous. But for the steady persistence of men like Dr. (later Sir) Thomas Legge, who was appointed Medical Inspector in 1898, and others, progress would have been even slower.<sup>1</sup>

The authors of the Report of 1904 seem to have been reluctant to take a decided line. They agreed that 'there are certain diseases which, without any question, arise out of employment'. Those handling oriental fleeces and skins were known to be exposed to the risk of anthrax, and special rules under the Factory Acts had been enacted to protect workmen exposed to infection. The same might have been said of phosphorus and of lead poisoning. But it had always been considered hitherto that such 'injuries' arose from disease, and not from an accident. The Report gave full weight to the importance of the legal decisions quoted above, but called attention to the 'great difficulties' which, in the view of the Medical Inspector of Factories, would arise in applying the principle of Compensation to cases of lead poisoning.<sup>2</sup> 'In order to bring the case within the Act it would be necessary to prove how and when the infection was contracted. This would be impossible in almost every case.'<sup>3</sup> The Committee contended that the inclusion of diseases under any compensation scheme 'would, in the majority of diseases, be so obscure and uncertain that it would probably lead to much dispute and litigation', and thought it better to deal with such cases 'under a system of sickness insurance than under a system of accident insurance'. Mr. Ratcliffe, representing the Mining Association of Great Britain, had declared in regard to the distinction of 'accident' and 'disease' that:

We do not ask you to amend it in our favour, in limiting the character of the accident, by introducing words which might give rise to the suggestion that the

<sup>1</sup> For details, Report of the Chief Inspector of Factories, 1932, pp. 41-53.

<sup>2</sup> Cf. Evidence of Dr. Legge, 7443-94.

<sup>3</sup> Cf. Report, 1904, p. 45.

disease that a man might contract otherwise than in the pit should be held to be the subject of compensation.

The chairman encouraged this line of argument by a further question:

In support of your recommendations you might point out that in almost all other systems of law which at all deal with this subject there is a line drawn between disease, accident, and old age. And accident is always treated separately?

To which the witness replied:

What we ask is that the Act, good or bad, should be left alone so far as this is concerned. We do not want it enlarged.<sup>1</sup>

From the employer's angle this was natural enough. But it is not easy to understand why the Committee adopted without comment the view expressed by Mr. Ratcliffe, observing that 'any attempt by the Legislature to over-define is apt to produce the very evils which it is intended to prevent',<sup>2</sup> and adding, 'We do not advise that any attempt should be made to define the word "accident".' The Committee, in fact, were 'not prepared to recommend any extension of the present Act in the direction of including injury resulting from diseases of occupation as ground for compensation'.

This was perhaps the weakest spot in the Report of 1904. Justice and common sense pointed in another direction. 'It is difficult to see', wrote Shadwell some years later,<sup>3</sup> 'why any disease contracted in the course of employment should not, on the same grounds, be judged an accident; e.g. bronchitis, tuberculosis, or any infectious disease caught from a fellow worker.... Catching cold is more likely to be a fault of the premises than falling downstairs and may involve much more serious consequences.' These words, written in 1909, within five years of the issue of the Report and only three years after the Act of 1906 had come into force, illustrate the temptation, in the absence of any system of National Health Insurance, to extend the scope of Workmen's Compensation to a point far beyond the intention of the Legislature.

The question of compensation for industrial disease would not have been carried farther had progress been dependent upon judicial interpretation of the word 'accident' as applied to various forms of industrial 'disease'. The argument of employers that, if a workman employed in sorting wool in a factory contracted anthrax through a bacillus which was present in the wool, this was merely a disease accidentally contracted, and not an accident in the currently accepted meaning of the word, might have prevailed and discouraged the search, since crowned with almost complete success, for some means of preventing it. The

<sup>1</sup> Cf. Q. 4044-6.

<sup>2</sup> Cf. *Report*, p. 46.

<sup>3</sup> Cf. Shadwell, p. 680.

affirmative decision by the House of Lords in the case of *Brintons Ltd. v. Harrisons Ltd. and Turvey* did not mean that all disease contracted by the workman in the course of his employment was 'personal injury by accident'.<sup>1</sup> It was, therefore, a great step forward when the Act of 1906 simply included certain industrial diseases within its scope, by enacting that disablement or death caused by such diseases were to be treated as if they were injuries by accident arising out of and in the course of the employment.<sup>2</sup> New processes of manufacture had given rise to new diseases or increased the risk of old ones upon a scale so considerable as to embrace a wide range of industries. Legal decisions which ignored this new factor in working-class existence would have been as remote from real life as those which created the doctrine of 'common employment'.

Under the new law judges were fortunately not asked to make law by declaring it upon doubtful points. Certain industrial diseases were specifically scheduled, and a special proviso was included preserving the right to claim a non-scheduled disease as an accident where such disease, being an accident, was one to which the schedule of diseases within the Act did not apply.<sup>1</sup> While, therefore, not curtailing the general rights of the workman in this respect, the Third Schedule gave a list of all diseases covered by the Act. This list, which has since (particularly in 1919 and 1931) been greatly enlarged, included anthrax, lead poisoning, mercury poisoning, phosphorus and arsenic poisoning, nystagmus and ankylostomiasis (mining) and the sequelae of such diseases. Moreover, Section 8 (7) of the Act gave wide powers to the Secretary of State to add other diseases, processes, and injuries (not being injuries by accidents) due to the nature of any employment specified by Order. The grounds for statutory compensation, so far as concerns the kind of injury admissible, were thus enlarged.

Another group of facts relevant to claims under the Act were to be found in respect of certain circumstances connected with the occurrence of the injury. The Act of 1897 was applicable to personal injuries received by accident 'arising out of and in the course of employment', and the Act of 1906 (s. 1 (1)) made no change. This provision had led to much legal controversy, but was left unaltered by the law of 1906.

A witness suggesting the omission of the words 'in the course of', Judge Ruegg (*Evidence*, A. 1022) demurred mainly on the grounds that the section had stood thus for so long, that the construction put upon these words by the Court of Appeal was all that could reasonably be asked for (by the workman). How little his optimism was justified is shown by the observation included in the Holman Gregory Report of

<sup>1</sup> Cf. Ruegg and Stanes, loc. cit., p. 52.

<sup>2</sup> *Vide* Section 6 (1) of the Act of 1906.

1922 (p. 23), that 'No other form of words has ever given rise to such a body of litigation', and by Lord Wrenbury's observation<sup>1</sup> in the course of a judgement in the House of Lords:

The language of the Act and the decisions upon it are such that I have long abandoned the hope of deciding any case upon the words 'out of and in the course of' upon grounds satisfactory to myself or convincing to others.

In another direction the Act of 1906 brought an important alteration. Section 7 (1) of the Act of 1897, which made it necessary that the accident should occur 'on, in, or about' the employer's premises, disappeared; no restriction was placed thereafter as to where the accident happened or the disease was contracted. Employment might have commenced before the work had begun. The workman, entering his employer's premises for the purpose of his work, might be held to be in his employment before he could reach his work, but the same could not be said of the time which elapsed between the actual cessation of his work and the moment when he left the premises. The general principle then laid down, and since maintained, is that he is protected by the Act in respect of the dangers of the locality which he must traverse in arriving at or quitting the place where his actual work is situated.<sup>2</sup> Simple as this rule appears, cases of extreme difficulty have arisen.

A firm of ship repairers contracted to repair a barge in a dock belonging to the Port of London Authority. A workman employed by the firm left his work at the end of the day in the dark, and, while attempting to reach the gates which led from the docks to the public road, fell into the water and was drowned. The docks were not open to the public, but the appellants had leave from the Authority for their workmen to pass through the docks to and from the barge. The arbitrator dismissed the claim for compensation on the ground that the relationship of master and servant had ceased when the accident happened. His decision was, however, reversed by the Court of Appeal, which was upheld by the House of Lords on the ground that the workman was still 'in the course of' his employment. Lord Dunedin, in the course of his judgement, declared:

'No general rule can be laid down when employment begins and ceases for the simple reason that each case arises in accordance with its own circumstances. . . . I cannot do better than borrow the words of Pickford, L.J., "The workman in this case in order to get to the actual place of work had to enter and leave premises where he had no right for being, except by the conditions of his employment, and in crossing them to encounter dangers which he would not have encountered but for that employment."'<sup>3</sup>

<sup>1</sup> *Armstrong Whitworth & Co. Ltd. v. Retford* (H.C. 1920).

<sup>2</sup> Cf. Ruegg and Stanes, loc. cit., p. 128.

<sup>3</sup> Cf. *Stewart and Son v. Longhurst*, [1917] A.C. 249; 10 B.W.C.C. 26; but, as showing upon what fine distinctions the cases have turned, see also *McRob v. Officer*, 10 B.W.W.C., decided by the Lords in the same year adversely to the workman.

The case shows how far the protection of the worker and his right for compensation had been extended by the Courts of Justice and in particular by the House of Lords.

The prevailing view, exemplified in the Workmen's Compensation Act, now was that accidents were inherent in modern industry, that in an irreducible minimum of cases they were bound to occur, and that the law should concentrate upon the provision of compensation rather than differentiate between different cases according to the degree of negligence or default of the employer or his agent. The conception of compensation and liability was now based upon the occupation itself and upon industry as a whole. It included disease as well as accident, and provided protection during the whole period of employment, even if 'work' had not begun or had ceased, and regardless of the location of the work. Personal behaviour, whether of employer or workman, was almost, but not quite, eliminated in reference to compensation, except that in the extreme case of 'serious and wilful misconduct' of the workman injured, the compensation was to be disallowed, as under Section i (c) of the Act of 1897, but subject now to the proviso 'unless the injury results in death or serious and permanent disablement'<sup>1</sup>—a most important change. The English Act of 1897 followed generally the line of the German Law of 1884. But new German legislation in 1900<sup>2</sup> largely modified this attitude by granting, in such cases, the annual payment, in whole or in part, to the dependants, who would be entitled thereto in case of the claimant's death. English law followed the German example. But, as we shall show later, the terms 'serious and wilful misconduct' and 'serious' disablement have led to much litigation.

These, then, were the main changes relating to the right to claim compensation in the Act of 1906. Changes affecting the amount of compensation and the mode of payment were not less important. The scale and conditions of payment may be summarized as follows:

Where death results from an accident or disease regard must be had to the following points:—

- (a) If the workman left any dependants wholly dependent upon his earnings, the compensation was to be a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of £150, whichever of these sums be the larger, but in no case exceeding £300, with some modifications.
- (b) If the workman left no such dependants, but left any persons in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the provisions mentioned before.

<sup>1</sup> Act of 1906, Section 1 (2) (c).

<sup>2</sup> Section 5 of the Law of June 30th 1900.

- (c) If he left no dependants, the reasonable expense of his medical attendance and burial, not exceeding ten pounds.

These conditions of compensation were already embodied in the Act of 1897.

Where total or partial incapacity for work resulted, the injured person was entitled during incapacity to a weekly payment not exceeding 50 per cent. of his average weekly earnings during the previous twelve months, if he had been so long employed; if not, then for any less period during which he had been in the employment of the same employer, such weekly payment not to exceed £1. Further provisions were:

- (1) if the incapacity lasted less than two weeks, no compensation should be payable in respect of the first week;
- (2) as regards the weekly payments due to a workman under 21 years of age at the date of the injury, earning less than 20s. weekly, 100 per cent. was to be substituted for 50 per cent. of his average weekly earnings, but the weekly payment should in no case exceed 10s.

We shall discuss later the difficulties to which these regulations have given rise. At this point it is merely sufficient to state the amounts provided.

As the Committee of 1904 had expressly stated that the sums provided appeared sufficient, it is not surprising that the Act of 1906 did not increase them. The Report declared<sup>1</sup> that 'these limits may be accepted as having in practice been found satisfactory'. As we have already shown (pp. 86 sqq.), the evidence by no means bore out this conclusion.

The Committee ignored the fact, well known to them from the reports of their own investigators of conditions in other countries, that the German Workmen's Compensation law of July 6th 1884 provided that, in case of complete inability to work, the payment should be  $66\frac{2}{3}$  per cent. of the earnings during such disability and that, in case of fatal accidents, the limit in regard to payments to the widow and the children had been made 60 per cent.

The Committee avoided any discussion of this issue and, in contrast to its treatment of the testimony of witnesses on other matters, made no reference in its Report to the views expressed by witnesses who pressed for higher compensation. Nor do these views appear to have received any attention at the time in the daily or periodical press, and the number of persons who took the trouble then or since to analyse the evidence in detail is doubtless small. It seems clear that

<sup>1</sup> Cf. p. 67.

the Committee did not wish to discuss whether it would be just or expedient to place an injured workman in a position which might not be, from a financial point of view, appreciably worse than before the accident. Such a discussion would have involved an inquiry as to whether the actual amount of compensation payable and paid under the Act of 1897 was adequate to maintain the normal standard of living of the beneficiaries. They seem to have assumed that the intention of the legislature was to give to the injured workman, or to his dependants, a sum in compensation which was not, and was not intended to be, adequate compensation for the loss sustained, but should suffice to prevent the parties from becoming chargeable to the Poor Law. Whatever be the reason, however, the only improvement embodied in the new Act as regards the tariff of compensation was in respect of persons under 21. The limit had been half wages: it now became full wages; the limit of 10s. a week was retained, but increased in proportion to probable earnings. It was not a generous proposal, but it was scarcely criticized when, in the following year, a Bill was introduced to give effect to some of the Committee's proposals.

The amount of compensation payable does not depend solely upon the sums prescribed in the schedule to the Act. There are certain statutory conditions precedent to the right to receive, or to continue to receive, compensation, viz.

1. That the injury is one which has disabled the workman for a period of at least one week from earning full wages at the work at which he was employed.
2. That notice of accident has been given as soon as practicable and before the workman voluntarily left the employment.
3. That the claim for compensation is made within six months of the occurrence of the accident or, in case of death, within six months from the time of death.<sup>1</sup>
4. That the workman has, when required by the employer, submitted himself to medical examination, either before or whilst receiving weekly payments under the Act.

All these conditions were already in the Act of 1897; the only change was a reduction from fourteen to seven days of the waiting period. Under the Act of 1897 no compensation was due for the first fortnight, no matter how long incapacity might continue. Under the new Act, if incapacity lasted less than two weeks, no compensation was payable in respect of the first week; i.e. if incapacity lasted less than

<sup>1</sup> Claim within six months can be dispensed with if the employer is not prejudiced in his defence by its absence or if its omission is due to mistake, absence from the United Kingdom, or other reasonable cause. See sec. 14 (1) (a) of the Act of 1925.

a week, no compensation was due; if for less than two weeks, compensation was not payable for the first week; if more than two weeks, compensation became due from the time of the accident for so long as incapacity continued.<sup>1</sup>

This improvement was not one recommended by the Committee of 1904, which, indeed, noted 'strong representations made' on behalf of the workmen in this regard,<sup>2</sup> but accepted the validity of the counter-arguments put forward by employers.

Practical considerations such as are indicated in the evidence above quoted make us, altogether apart from the question of principle, reluctant to propose any interference with the existing provisions. As the Act at present stands, the fact that no compensation is in any case payable in respect of the first two weeks is a strong incentive to the workman, if the injury is not really of a serious character, to get back to work as quickly as possible; but if this incentive were removed or weakened, workmen even of a better class would be apt, unconsciously and without any intent to malinger, to exaggerate the effects of the injury and to stay off longer than necessary. This would be still more likely to happen where the workman, as sometimes happens, is in receipt of allowances both from his Union and a Friendly Society, and the sums received, added to compensation money, equalled or possibly exceeded his average earnings when at work. There is evidence that even in present circumstances this 'over assurance', as it has been called, acts as a great temptation to prolong the period of rest. Again, any alteration in favour of the workman of the two weeks' limit, whether it was abolished or only reduced, would undoubtedly be followed by a large increase in the number of claims, and it seems more than probable that this increase would be so large as to make it impossible for the employers to check each claim properly, or, except at great disproportionate expense, to exercise any effective supervision over the cases in which compensation was being paid.

In a further passage the Committee showed, even more clearly, their opposition to any change in the matter:<sup>3</sup>

On the whole we feel obliged to come to the conclusion that the transference to the employer of the burden of compensation for the whole or any part of the first two weeks would be a grave departure from the system deliberately adopted by Legislature in 1897, and that there are not sufficient reasons to justify us to increase any recommendation to that effect.

The Committee, called upon to make proposals to amend and extend the sphere of Workmen's Compensation, was from the outset influenced by the apprehension that the workman might abuse the statutory benevolence of the employer, ensured to him by these Acts. The relatively small amount of compensation, and the waiting period, were intended, in their view, to act as a deterrent to laziness on the

<sup>1</sup> Cf. Ruegg and Stanes, loc. cit., pp. 186-7.

<sup>2</sup> Cf. *ibid.*, p. 76.

<sup>2</sup> Cf. *Report*, pp. 71-2.

part of the workman; a more liberal scale of compensation might arouse unjustified hopes. This distrustful attitude towards the administration of social services was typical of the time. It has not entirely disappeared. Malignerers exist, in every walk of life and in every profession, but we may apply to injured workmen the tribute paid in *The Times* of Feb. 23rd 1938 to unemployed men by Lord Rushcliffe, Chairman of the Unemployment Assistance Board:

so far as the experience of the Board extends, there are no grounds whatever for doubting the good faith of the overwhelming majority of unemployed persons or their anxiety to obtain employment.

The problem of the shirker exists and must be faced, but its extent must not be exaggerated nor made the basis of any generalization which would be unjust to the unemployed as a whole.

When the Committee of 1903-4 was sitting, the problem of unemployment was again to the fore and there was much talk of 'unemployables'—men less unable than unwilling to find work. It was, *crambe repetita*, what puritan writers, in the eighteenth century and later, had urged in favour of the workhouse and other deterrents. The Committee may well have been afraid to recommend anything that might strengthen parasitic proclivities, and to give an injured man an immediate allowance might have appeared, to those who held these views, to tend in that direction. Every trade union official and every doctor knows that such cases exist; they bulk largely in medical literature, as do all abnormalities, but they are not more, probably even less, common than abuses of unemployment or sick benefit. This much, however, is clear—whatever may have been in the minds of the Committee, the only important concession to the injured party made by the Act was effected against their advice.

As regards the method of payment, which was also prominent in the discussions before the Committee of 1904, there are two main points to be mentioned. The mode of ascertaining the 'average weekly earnings' under Section 1 of the First Schedule of the Act of 1897 had given rise to considerable difficulties. The Court of Appeal had at one time held<sup>1</sup> that no compensation was payable under the Act, unless the workman had been at least two weeks in the employment of the employer under whom he was working when the accident occurred, on the ground that, if the employment had been for any shorter period, there was no means of assessing the amount of compensation. This decision had been disastrous to casual or newly employed labourers who met with an accident before the first two weeks of the new employment had elapsed. Such an interpretation

<sup>1</sup> *Lyons v. Knowles*, [1900] 1 Q.B. 780, and *Stuart v. Nixon*, [1900] 2 Q.B. 95.

of the Act was soon set aside by the House of Lords, which declared, in *Lyons v. Knowles*, 1904 A.C., that the length of the new employment was immaterial to the right of compensation, whatever the difficulties of assessing the amount might be.<sup>1</sup> It was, however, still necessary to calculate compensation on the basis of the wages received, or agreed to be paid, during the time that the workman was in the service of the same employer. On this matter the Committee noted that it was difficult to see how such restriction could be justified.

If the workman is entitled to compensation, irrespective of the length of his service, it seems that such compensation should be of a substantial character. It is, no doubt, hard upon the employer that he should find himself saddled with an obligation to pay an annuity for life to a workman whom he had intended to employ on a job, and cases have been mentioned to us where compensation has had to be paid upon mere temporary employment given from motives of charity.

These arguments appear to us untenable. The Committee might be justified, in theory, in their view that an employer might feel it a hardship to pay compensation to a man newly in his service. The simple way out is by insurance against such a liability at a cost, which may be as low as 1s. 6d. per £100 paid in wages. The Committee might well have underlined the necessity of insurance, even on a compulsory basis, but on this matter they had nothing to say. They pointed, indeed, to several cases where the calculation of 'average weekly earnings' had led to gross injustice to the workman. Men, particularly casual workers, who might have been employed for only a few days, or half a day only, by a new employer, or who had suffered some break in their existing employment, might, on this principle, receive a few shillings or pennies per week compensation when injured.<sup>2</sup>

The Report, supported by several witnesses, called attention to the possible introduction of a principle, analogous to that of Section 3 of the Employers' Liability Act, based upon some calculation derived from estimated earnings, during a period preceding the injury, of a person in the same grade of employment during those years in a like employment and in the district in which the workman was employed at the time of the injury. The Committee, however, also drew attention to some difficulties in regard to such average assessments and computation, where the adoption of the standard of the Employers' Liability Act would clash with wide variations customary in certain industries, such as in the textile manufacture.

The new Act made an important change. According to the First Schedule (2), 'average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the

<sup>1</sup> Cf. *Report*, 1904, pp. 76-8.

<sup>2</sup> Cf. *Evidence*, 2023, 2496-505.

workman was being remunerated'. This must be read with the following proviso:

Where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of his employment, or the terms of his employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount, which during the twelve previous months of the accident was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district.

Here was a considerable improvement in the conditions of workmen, and it was achieved in the face of the misgivings of the Committee.

A further point relating to the conditions of payment arose where the workman, for any reason, was not to be compensated in the normal manner, viz. by the application of the statutory benefits and by weekly payments. It might be a case of contracting-out, a practice permitted by the Act of 1897, subject to certain safeguards.<sup>1</sup> Although contracts excluding liability under the Employers' Liability Act, 1880, or the Common Law, may still be entered into, they were subject, under the Act of 1906, to the proviso that any scheme substituted for the benefits provided under the Act must provide scales of compensation not less favourable to the workmen and their dependants than those contained in the Act itself; and, where the scheme provides for contributions by the workmen, the scheme must confer at least equivalent benefits in addition to those due to the workmen under the Act. Section 3 required that the contracting-out scheme should be approved by the Registrar of friendly societies, after ascertaining the views of the employer and workmen, and after satisfying himself that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable were in favour of the scheme. The Act thus holds out no inducement to employers to establish such schemes.<sup>2</sup> In fact, conditions were now such as Mr. Asquith had once anticipated (see p. 68), for, in addition to the trouble involved in their formation and management, the benefits must be at least as great as those given by the Act. It may be assumed that no scheme, not clearly better than the Act itself, would be certified by the Registrar, and the Act of 1906 expressly provides that not only shall no scheme (as in Section 3 (3) of the Act of 1897) be certified which contains an obligation upon the workmen to join the scheme as a condition of hiring, but that any scheme approved must contain provisions enabling a workman to withdraw therefrom.

There is, however, nothing in the Act of 1906 to prevent an adult workman accepting a lump sum in satisfaction of a claim. Upon this

<sup>1</sup> Cf. Section 3 (1-7).

<sup>2</sup> Cf. Ruegg and Stanes, p. 253.

subject controversy is perennial and no agreed solution is in sight. We shall at a later stage deal at length with the economic and social aspects of lump-sum awards, contrasting recent expressions of opinion on this subject with those recorded by the Report of 1904 which took a serious view of the matter, calling attention to and condemning the behaviour of insurance offices in their endeavour to make financial economies by means of lump-sum payments at the expense of injured workmen. We are here concerned only with legal aspects. The Committee, though slow to espouse 'radical' remedies, urged that something should be done to protect the workman against victimization by insurance offices and their agents, and in this respect the protection to the workman was increased.<sup>1</sup> The statutory situation was now as follows: although the Act provided that all agreements under the Act must be registered, there was no penalty for failure to register. An unregistered agreement consequently<sup>2</sup> remained a valid agreement except in three cases, where the penalty for non-registration was that neither the agreement nor payment under the agreement discharges the employer from his liability under the Act:

- (1) agreements as to the redemption of a weekly payment by a lump sum;
- (2) agreements as to the amount of compensation to be paid to a person under legal disability; and
- (3) agreements, in case of death, as to the amount of compensation to be paid to dependents.

These, again, are the same three cases in which, under Schedule II (9) (d) of the Act, the Registrar was given jurisdiction to refuse registration on the ground that the sum was inadequate or that the agreement was improperly obtained. The statutory provisions of the Act thus indirectly provided a modicum of protection for workmen through registration.

Why the Act stopped short of direct measures of protection is not clear. The 1904 Committee showed conclusively that abuses were latent where agreements were not subject to official and therefore independent review, especially as regards the commutation of weekly payments for lump sums.<sup>3</sup> Hence the important extension of Schedule II of the Act of 1906, which conferred upon Registrars powers (beyond

<sup>1</sup> *Vide* Schedule II (10) of the Act. If not registered, an agreement as to the redemption of weekly payment by a lump sum does not exempt the person by whom the weekly payment is payable under the agreement from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable under the agreement from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

<sup>2</sup> Ruegg and Stanes, loc. cit., p. 282.

<sup>3</sup> Cf. *Report*, 1904, pp. 86-8.

those already possessed by Schedule II (8) of the Act of 1897) to reject an agreement 'by reason of the inadequacy of the amount' and to refer it to the judge. Why not make unregistered agreements illegal instead of merely risky to the employer? Was this awkward compromise due to traditional English reluctance to interfere with the right of the individual to make agreements? Had it been possible so to draft the new law as to make all unregistered agreements illegal, there would have been no such opportunities of avoiding or circumventing the law as were in fact left and which led to numerous evasions. The phrase 'redemption of weekly payments by a lump sum' soon led to practices inconsistent with the intention of the Act. The Court of Appeal interpreted these words strictly. In 1912<sup>1</sup> the Court held that where a workman had, before any weekly payment was agreed or paid, accepted a lump sum of 35s. in satisfaction of his rights under the Act, and where the arbitrator had found that this was a valid contract, there was no necessity to register the agreement under Schedule II (10), for, inasmuch as no compensation had been agreed or paid, there was nothing to redeem. The Registrar had, in consequence, no power to consider the adequacy of the amount, as, though it was in fact a lump-sum settlement, it was not a 'redemption of weekly payment' within the Schedule (a). In all such cases<sup>2</sup> the Registrar had to record the memorandum if satisfied that it was genuine, for the Legislature gave a right to a statutory remedy only 'in default of agreement'.

It is a matter of deep regret that eleven years had to pass before the House of Lords held, in 1923 and again in 1924, that the distinction drawn between agreements for redemption of weekly payments, and agreements by way of compromise before weekly payments had been in any way determined, was not warranted by the terms of the Workmen's Compensation Act, 1906, holding that an agreement whereby the workman gives up his right to weekly payment under the law is void, and that an employer, apart from a certified scheme, can avoid future liability only by recording the agreement. So far as the Court of Appeal had held otherwise it was overruled.<sup>3</sup>

The Act of 1906 did little in the matter of lump-sum payments, although the deficiencies of the law in this respect had been made clear to the Committee. Nothing was done to clarify the law relating to composition agreements in cases of disputed liability, where an employer or insurance company says: 'We dispute the claim, but it will cost us £50 to fight it. We will therefore pay you £50 to settle

<sup>1</sup> Cf. *Ryan v. Hartley*, [1912] 5 B.W.C.C. 407.

<sup>2</sup> There were also later decisions of the same character; cf. Ruegg and Stanes, loc. cit., p. 288.

<sup>3</sup> In *Russell v. Rudd*. Cf. Willis, pp. 433-4.

the matter.<sup>1</sup> Any question under the Act of 1906 might be settled by agreement between the parties, and recourse to the machinery provided by the Act<sup>2</sup> was contemplated only in default of agreement. It may well be that the Act of 1906 encouraged settlements in cases of disputed compensation, for, while arbitration proceedings were commonly taken under the Act of 1897 in a county court when there was no dispute at all, Rule 8 (1) of the Consolidated Workmen's Compensation Rules, made under the Act of 1906, provided that a request for arbitration should not be made unless some question had arisen between the parties and such question had not been settled by agreement. If, then, the employer in a disputed case preferred to settle the matter by agreement, he only chose what the law appeared to regard as a normal procedure. How far a workman, over-persuaded by the agents of his employer or an insurance company, might be the loser, was a possibility not envisaged by those responsible for drafting the Bill, who seem, in spite of the pertinent evidence given by Commander Smith and others, to have failed altogether to realize the helplessness of the working classes in such matters.

Taken as a whole, the Act of 1906 did no more than extend, amend, and improve earlier legislation and provide some further protection for injured workmen. The basic principles of the law were, as a matter of policy, retained intact. Compulsory insurance, stricter state supervision, and the like reforms found no place. But one section of the Act should not be overlooked, although most writers appear to have paid little attention to it. It contained the germ of compulsory insurance by employers. Under Section 8 (7) of the Act, an inquiry might be held on the application of any employers or workmen engaged in any industry to which the section applies, i.e. diseases, to ascertain whether a mutual trade insurance company or society for insuring compensation risks has been established in the particular branch of industry, and whether the majority of the employers were insured in that company or society. Subject to the outcome of such an inquiry the Home Secretary was entitled, by Provisional Order, to require all employers in that industry to insure in the said company or society upon such terms and subject to such conditions and exceptions as should be set forth in the Order. Where such a company or society had been established, but had been confined to employers in any particular class or locality, the Secretary of State was entitled for the purpose of this provision to treat the industry, as carried on by employers in that locality or of that class, as a separate industry.<sup>3</sup>

<sup>1</sup> Cf. *Report*, 1904, p. 53.

<sup>2</sup> Cf. Ruegg and Stanes, p. 256.

<sup>3</sup> The Provisional Order, however (Section 8 (8)), was to be of no force, unless and until confirmed by Parliament, and if, while the Bill confirming such Order was pending in

This provision might conceivably have been extended to cover compulsory insurance in certain categories of industry, but, in fact, it has never been brought into play, so far as we can ascertain, for this or any other purpose.

We have endeavoured to point out how far the new Act differed from that of 1897, and how far it fell short of the hopes and proposals of representatives of the working-class interest. To what extent the law failed to remedy existing evils and deficiencies can be deduced only from actual experience as set forth in the vast quantity of material collected fifteen years later by the Holman Gregory Committee. As had been the case in 1897, the Bill was opposed in Parliament, but less violently than of old,<sup>1</sup> for the necessity for and framework of Workmen's Compensation was no longer in dispute. The Labour party was not satisfied with the Bill. Mr. Barnes declared that it 'would not compensate. It provided merely for a maintenance being given to a man who was injured.' He asked for compulsory insurance<sup>2</sup> and urged the provision of greater security for the workmen employed by small undertakings. Sir Charles Dilke called the attention of the House on first reading to foreign legislation on the subject, to which, as he observed, little attention was paid in this country, holding compulsory insurance to be an indispensable preliminary to any real improvement.<sup>3</sup> On second reading,<sup>4</sup> he declared that, as early as 1893 (see p. 59), Mr. Joseph Chamberlain was contemplating 'universal insurance'.

Within the last few years [he explained] it has been alleged that it was too soon to bring about so sudden a change, but 1893 was a good many years ago, and it was then already alleged that the thing was premature. The Right Hon. Member for West Birmingham asked the then Liberal Government: 'Why do you not take this opportunity of completing your work?' It was answered that public opinion was not prepared for so great a change, and he said 'How do you know that? It is the duty of the Government to lead and instruct public opinion. Opinion is making rapid strides in this direction.' That was in 1893, and yet they had had nothing in that direction, although they raised these speeches against the Right Hon. Member for West Birmingham in 1897 and since.

The *Economist*, the *Statist*, and similar journals devoted little space and no leading articles to the new Act. In liberal and business quarters either House, a petition was presented against the Order, the Bill might be referred to a Select Committee, the petitioner being allowed to appear in opposition as in the case of Private Bills, and any Act confirming a Provisional Order under this section might be repealed, altered, or amended by a Provisional Order made and confirmed in the same manner.

<sup>1</sup> See in particular second reading, vol. 155, 4th series.

<sup>2</sup> *Debate* of April 26th 1906, vol. 154, 4th series, p. 902.

<sup>3</sup> *Ibid.*, p. 906.

<sup>4</sup> Cf. *Debates* of April 4th 1906, vol. 155, p. 523.

it was regarded as a very 'radical' measure. Shadwell, who well reflects the trend of progressive opinion of those days,<sup>1</sup> observes:

One is tempted to speculate on the ulterior bearing of this remarkable step. In a sense it is highly socialistic, but the broad demarcation laid down between employers and employed involves a juristic sanction of that relationship recognised by the State, but not managed or controlled by it. There is no question of state insurance; employers are made liable by the law, but they are left to fulfil their obligations as they please; the State stands aside.

This commentary is characteristic not of the man but of his period. Nearly everybody, save a few ardent spirits who followed in the steps of Chamberlain and early English conservative social pioneers, was thankful that this, 'in a sense highly socialistic', measure had not envisaged compulsory insurance, the merits of which, though clearly demonstrated by the Memorandum of the 1904 Committee, were, if publicly discussed, generally denounced as an un-English interference with personal liberty. Eminent Englishmen did not hesitate to assert that the German system of dealing with employers' liability was 'infinitely superior to ours'.<sup>2</sup> Of the German system of National Insurance Mr. Lloyd George wrote:<sup>3</sup> 'In Germany the inception of the Scheme was not accompanied by discontent, unpopularity, and gloomy prophecies. Its success is now triumphant, unquestioned alike by employers and employed. It was from Germany that we who were privileged to be associated with the application of the principle to the United Kingdom found our first inspiration, and it is with her experience before us that we feel confident of the future.' This German legislation included compulsory and state-controlled insurance against employers' liability to compensate workmen for injury. The fact that, in England, leaders not only of Labour but also of enlightened Conservative and Liberal opinion had recognized the usefulness of the German system, should have convinced others as to its advantages. But their first concern was to retain, at whatever price, the immunity of the employer from interference from, or supervision by, the State officials.

<sup>1</sup> Cf. Shadwell, loc. cit., p. 681.

<sup>2</sup> Cf. Chiozza-Money, loc. cit., p. 53.

<sup>3</sup> Cf. ibid., p. viii.

## CHAPTER VI

### THE FARRER REPORT

(POST OFFICE AND WORKMEN'S COMPENSATION)

But, if it be not safe to touch the abstract question of man's right in a social state to help himself even in the last extremity, may we not still [contend] for the duty of a Christian government, standing *in loco parentis* towards all its subjects, to make such effectual provision that no one shall be in danger of perishing through the neglect or harshness of legislation? Or, waiving this, is not it indisputable that the claim of the State to the allegiance, involves the protection of the subject? And, as all rights in one part impose a correlative duty upon another, it follows that the right of the State to require the services of its members, even to the jeopardising of their lives in the common defence, establishes a right of the people (not to be gainsaid by utilitarians and economists) to public support when, from any cause, they may be unable to support themselves.

WILLIAM WORDSWORTH, *Legislation for the Poor*, 1835.

TWICE in the history of Workmen's Compensation in this country during the last forty years an opportunity for comprehensive reform presented itself. On each occasion it was missed. The first occasion was the Workmen's Compensation Committee of 1904-5, on whose report was based the Act of 1906; the second was the Holman Gregory Committee of 1920-2, on which also further legislation was based, though the Act of 1923 first appeared in the House of Commons as a private member's Bill and owed its very existence to the chances of the ballot-box. Important as was the Act of 1906 in extending the scope alike of compensation and benefits, it did not widen the basis of the principal Act. It left the individual employer to bear full responsibility for compensation, with the option to insure against it if he could. The spectre of state interference remained in the background. If it made a shadowy appearance it was ignored as an alien conception, or exorcised. But its existence could not be denied; it was known to play an important part abroad and was believed to be an effective remedy for certain evils.

The Holman Gregory Committee took much the same line; the possibility of making a Department of State responsible for the system was not seriously considered. The suggested appointment of a Workmen's Compensation Commissioner was rejected by the government of the day. This fact endows with added significance an Official Report which, in more favourable circumstances, might have turned official opinion into fresh and fruitful channels. In June 1907, just one month before the new Act came into force, there was presented to Parliament the Report of a Departmental Committee, appointed

under the chairmanship of Lord Farrer, to consider whether the Post Office should provide facilities for insurance under the Workmen's Compensation Acts. The terms of reference suggest that official consideration had already been given, probably two years earlier, to the expediency of this development, which would have associated the State with a branch of social legislation which was then perhaps the most important of the social services, for state pensions had not yet appeared on the horizon and insurance systems against unemployment and National Health Insurance were not yet envisaged. The Farrer Report dealt only with the first part of the whole task assigned to the Committee, the second being to consider whether steps should be taken to popularize Post Office Life Insurance policies.<sup>1</sup> Its recommendations upon the latter subject proved futile; its proposals in regard to the former matter were equally ineffective. The Committee itself was well aware that nothing useful could emerge from its deliberations, explaining frankly that

- (1) no such scheme could be set up without special legislation; and
- (2) the Post Office could not create and staff a new *ad hoc* department to administer an Act already in force.

'These objections', the Report affirmed, 'are obviously fatal to the immediate creation of a Scheme of State insurance against liability under the Workmen's Compensation Acts.'

Other influences, however, may have been at work. The Committee refer to difficulties in the path of any government department which might contemplate 'dealing with insurance of this character'. They foresaw<sup>2</sup> an 'inevitable lack of elasticity . . . , rendering the treatment of doubtful claims more difficult and expensive'. They foresaw 'unfair pressure' upon Members of Parliament to prevent cases being decided on their merits; they feared that a new and undesirable relationship might be created between Post Office servants and the public; that under a government scheme unprofitable business might be taken; that sub-postmasters<sup>3</sup> in 'remote rural districts' (in which a negligible number of insured persons lived) would lack technical facilities to handle such business; and observed that a government department ought to avoid being drawn into frequent litigation.

Lastly, they noted 'a general expectation that the Post Office would charge lower rates than the companies or would deal more liberally with claims. It is by no means certain that this expectation could be realized, except at the expense of the taxpayer.'

<sup>1</sup> Cf. Wilson and Levy, *Industrial Assurance*, 1937, pp. 101 sqq.

<sup>2</sup> Cf. *Farrer Report*, p. 7.

<sup>3</sup> There would, of course, be no need for sub-postmasters to deal with difficult cases, which could be referred to head offices or district head-quarters.

The Report quoted several witnesses in support of these drastic negatives, but made it clear that the Committee had not envisaged the question as one involving the conduct of a social service, but only the administrative and legal difficulties attendant upon the inception of a state scheme of Workmen's Compensation insurance. They disregarded the investigations of 1904 into the system in Germany, where the difficulties adumbrated by the Committee either had not materialized or had been surmounted. Nor did they compare the ills they knew, which they were content that others should bear, with those whose existence they anticipated in any state system. They expressed no view as to the limitations of the new Act nor as to the possibility of extending its operation by governmental agency.

They could safely have done so without running counter to received 'liberal' opinions, for Sir Herbert (later Viscount) Samuel, in his evidence, held that, in many ways, the Post Office could take a 'much broader view'.

The small employer, especially the very small employer, who is hardly removed from a workman, may sometimes find himself in technical difficulties, because he has not sent in a notice to the insurance company within the right number of hours or something of that kind. . . . I imagine that the Government might take a more liberal view of such points and would not have the same tendency to raise technical difficulties.<sup>1</sup>

He explained in detail why he thought that the Post Office 'could do it cheaper',<sup>2</sup> and his testimony was not seriously challenged. In the circumstances it is not surprising that the Report of the Committee was not only sterile in the legislative sphere, but went far to discourage in advance any schemes whereby the State would have become a partner, under whatever limitations, in the administration and control of Workmen's Compensation.<sup>3</sup> Such ideas were rejected with emphasis. The Committee limited itself to suggesting that notices should be exhibited at all post offices drawing attention to liabilities imposed by the Act, and the advisability of insurance against them, and that the Post Office should

offer to distribute at post office counters an alphabetical list of Accident Insurance Companies, to be prepared at the expense of the companies, with the definite notification that the list is prepared by the Companies and in no way commits the Post Office.

In regard to this latter 'recommendation' the Hon. R. D. Denman, M.P., observed, with his customary terseness, in a dissenting memorandum, that he did not see

what demand may be expected for a mere alphabetical enumeration of the names of

<sup>1</sup> A. 1568.

<sup>2</sup> A. 1570-3.

<sup>3</sup> Report, p. 8.

the few scores of Companies, or what credit the Post Office would gain by distributing such a document.

The suggestion seemed to him not merely 'harmless and unnecessary' but objectionable. He did not wish to see the generality of companies doing this business sponsored, however vaguely, by the Post Office. (It was before the days of Post Office advertising of quack and doubtful remedies and appliances, with its attendant evils.)

A list of that kind distributed officially would inevitably be regarded as carrying some guarantee of the respectability of the Companies whose names appeared upon it, no matter what protests to the contrary it contained. I am opposed to a scheme under which the Post Office might be deemed responsible in the least degree for the finance or business methods of certain possible types of Companies.

The mountains had been in labour, but were not unanimous as to their responsibility for the mouse.

Yet the evidence submitted to the Farrer Committee is not without real historical value. Just as the conclusions of scholars and scientists of a later generation differ from those drawn from identical premisses by their predecessors, and just as judges to-day sometimes interpret the common and even the statute law on lines which would have been unacceptable to their predecessors; so, after a lapse of thirty years, it is useful to re-examine the evidence and to indicate what conclusions might have been reached had other criteria been applied. In so doing we shall not touch upon certain schemes and plans dealt with in this report, which are now of merely antiquarian interest; we shall concentrate upon certain aspects of the evidence which were not apparent to, or were not adequately dealt with by, the Committee, but still have a bearing upon the problems of the present day. A case in point is a masterly and comprehensive Memorandum<sup>1</sup> prepared for the Committee by Mr. R. R. Bannatyne of the Home Office.

The principal problem which presented itself to the Government before the Act of 1906 came into force, and to the Committee, was the existence of a considerable body of non-insurers. As foreshadowed by the Committee of 1904 (see p. 92), many small employers, in spite of the risk they ran, abstained from insuring.<sup>2</sup> The scope of Workmen's Compensation had been greatly expanded by the inclusion, in pursuance of the new Act, of some 6,000,000 persons<sup>3</sup> whose employers were unlikely to insure themselves against their liabilities under the Acts.<sup>4</sup> The Committee were content, without quoting the

<sup>1</sup> *Report*, App. I.      <sup>2</sup> Cf. *Report*, 1904, p. 43.      <sup>3</sup> Cf. *Farrer Report*, p. 137.

<sup>4</sup> Cf. A. 1914: 'He knows he is responsible for him, but he ignored it altogether.'

A. 2075: '... small occupiers in outlying districts being ignorant of their liabilities . . . in many cases the fact that many years have passed without accident makes the employer

text of the evidence, to report that witnesses had made 'somewhat conflicting statements', adducing in support of this view the evidence of the Factory Inspector of Aberdeen, although this witness, while declaring that 95 per cent. of the small employers were insured in his district, strongly advocated compulsion for the small employer. The Committee seem to have forgotten that different trades and different types of small employers might take very divergent views about insurance, and that the evidence of the lack of insurance in some branches of industry should have been sufficient justification for legislative action, even though a large percentage of small employers in other branches were careful to insure. The Committee evaded any discussion of Mr. Bannatyne's comprehensive and critical survey, which emphasized that small employers were even less likely to come within the scope of the new Act than of its predecessor, for the Act of 1897 had applied to industries organized, for the most part, in large units, and to industries, mainly 'dangerous trades', covered by mutual indemnity associations and provided, in general, by organizations representative both of men and employers. These features were, for the most part, absent from the new categories of industry brought within the scope of the new Act; the danger of small employers neglecting or even refusing to insure was thus considerably greater.<sup>1</sup> Mr. Bannatyne concluded that

at any rate for the first five or ten years after the new Act comes into force, large numbers of small employers will remain uninsured.

He endorsed Commander Smith's evidence (see p. 98) that small employers would never insure until it was compulsory. Was it because facilities to insure were lacking? Not so far as concerned the Act of 1897. As regards the Act of 1906, insurance companies were unlikely to be at pains to secure the business of 'certain classes of small employers', which might scarcely cover the cost of collection. But the apathy of small employers was the principal factor, and there is force in his conclusion that

Supposing it is right to assume that the reasons why considerable numbers of "think twice about paying something for nothing", as I have heard it expressed several times.'

Q. 2116: 'The general trend of your evidence is that compulsion will be necessary and not facilities only?'

A. 'Yes, for the small employer.' (*Evidence of the Inspector of Factories at Aberdeen under the Home Office.*)

Q. 2249: 'And even the risk for which the premium is 10s., you think builders would rather run themselves than insure?'

A. 'Yes, that is to say a certain class of builder would rather run the risk.'

Cf. also Q. 1958-9.

<sup>1</sup> Cf. *Farrer Report*, App. I, p. 138.

small employers do not and will not insure, are not want of facilities, but lack of prudence or energy, or (as is certainly often the case) sheer indifference to the prospect of bankruptcy, by what methods, short of compulsion, can these employers be persuaded to insure?

The Committee did not challenge this alternative. It simply denied the fact that a large number of small employers did not insure and, without analysing the evidence, set it aside as 'conflicting', whilst admitting that 'a residuum' of small employers would remain uninsured unless compelled to do so. Events soon showed how erroneous was their conclusion, and how unjustified their complacency. Four years later, in 1910, Returns received by the Home Office from uninsured employers in seven industries, including Shipping and Railways, totalled 22,883. Returns received from uninsured employers who had made no payments for compensation during that year numbered 20,915. Thus<sup>1</sup> at least 250,000 workmen outside the seven industries were employed by uninsured persons—no small figure—even though the collective risk was less than in the seven principal industries.

The plight of a workman when his employer is not covered by insurance is a feature of any informed discussion on the subject.<sup>2</sup> A heavy responsibility lies upon the Farrer Committee, whose strong bias prevented it from giving proper weight to the evidence, and upon Members of Parliament to whom the evidence was, at least, presented as a Parliamentary paper or available as a Stationery Office publication—a practice now becoming the exception rather than the rule.

The evidence in regard to compulsory insurance was as emphatic as it was authoritative. Factory Inspectors reported as follows:

*Bradford*: Scheme of National Insurance desirable and would be welcomed, as State would deal more fairly than companies. Factory inspectors could divide all works into three classes for purposes of premium. This would also strengthen the hands of inspectors.

*Derby*. All the uninsured employers would welcome a scheme of government insurance.

*London W.* Small employers would welcome State Insurance, as they are disgusted with methods of companies.

*Manchester (Cotton Factory Inspector)*. Small employers generally are in favour of P.O. scheme of insurance.

*Norwich*. State insurance would reach the majority of the uninsured, who would have a confidence in the State that they lack in the companies.

<sup>1</sup> Cf. Holman Gregory Report, p. 17 (and Chapter VIII).

<sup>2</sup> Cf. *Parliamentary Debates H.C.*, Nov. 19th 1937. Mr. John Jones: 'One of our worst experiences has been, particularly in the case of small employers, that, although a verdict has been given in favour of the man or his dependants, the employer has gone bankrupt and has not been able to pay.'

*Staffordshire*. Small employers would welcome P.O. Insurance.

*Wolverhampton*. P.O. Insurance would be of great service to small employers if premiums could be placed in S.B. Accounts.

Inspectors of Factories favoured the assumption by the State of responsibility for insurance against employers' liability under the Acts. The only dissentient was the Inspector for Aberdeen, who thought compulsory insurance useless without vigorous canvassing,<sup>1</sup> but even he emphasized the necessity for compulsory insurance.<sup>2</sup> He told of cases within his knowledge of great hardship to injured workmen,<sup>3</sup> and observed that in Aberdeen there were 1,600 factories and 3,637 workshops, of which 1,200 and 3,000 respectively, or 4,200 in all, were to be classed as small employers. Mr. W. Sidney Smith, Inspector of Factories in Derby, had no doubt that a scheme of government insurance against serious accidents would be popular, adding that he had known cases of personal accident policies where injured workmen, who had not the money 'to waste in urging a claim', received very unfair treatment by the insurance company.<sup>4</sup> One workman had told him that as things were he preferred to take his own risk and would welcome a cheap and safe scheme of government insurance.<sup>5</sup> He added that bad experiences with insurance companies as regards personal accident policies were likely to prevent small employers from insuring against their liability under the Acts<sup>6</sup> otherwise than under a State scheme. Another witness, Miss Sanger, from the Women's Trade Union League, pointed out that

many people have a rooted objection to dealing with insurance companies which, they say, means litigation and worry.<sup>7</sup>

The Secretary of the Railway Passengers' Assurance Company stated that 'the small man occasionally . . . goes bankrupt and the workman is deprived of the benefit which legislation has provided. Unless you have compulsory insurance I do not know how you can deal with such cases'.<sup>8</sup> Mr. Bullen, a director of the Federated Employers' Insurance Association of Manchester, took the same line, and challenged the claim of some insurance companies that 'canvassing reaches . . . 95 per cent. of the people who are in a position of employers in this country'—a view that overwhelming evidence already quoted had shown to be untenable—and affirmed 'after much thought' that there are very many small employers whose business is not much sought after,

<sup>1</sup> Cf. for the above quotations *Farrer Report*, App. VII, pp. 159–61.

<sup>2</sup> Cf. Q. 2112: 'I understand that the tendency of your evidence is to say that to make these small employers insure, some form of compulsion will be necessary?'

A. 'That is my strong point about small employers, that they must be compelled to insure.'<sup>3</sup> A. 2075.

<sup>5</sup> A. 2036.

<sup>6</sup> Cf. A. 2054–5.

<sup>7</sup> Cf. A. 1593.

<sup>4</sup> Cf. Q. 2031–3.

<sup>8</sup> Cf. A. 312.

owing to the simple fact that individually the premiums received would be so small as to render the business hardly worth while seeking,

and that 'the gigantic organization of the Post Office gives the utmost scope' for reaching every employer.<sup>1</sup> This testimony was to all intents and purposes suppressed by the Committee in favour of their own prejudices.

Thus, while almost all the evidence indicated that, under the existing system of voluntary insurance, many employers remained uninsured against their legal liability to their workmen, there were also complaints, not limited to the problem of 'small employers', in regard to the existing system of private insurance. Mr. A. E. B. Soulby, the Secretary of the Yorkshire Union of Agricultural Clubs and Chambers of Agriculture, then the largest agricultural organization in that county, was anxious to see compulsory state insurance on a co-operative basis under the auspices of the Agricultural Organization Society,<sup>2</sup> the prototype of the present National Farmers' Union:

If the Insurance Companies lose the business of Farmers' Insurance, it will be only a just retribution for the manner in which they have taken advantage of the imperfect organization of farmers to exact oppressive rates of premium.<sup>3</sup>

A Memorandum submitted by the Association of Insurance Brokers and Agents claimed that a Post Office scheme was neither desirable nor necessary, as the field was already fully covered by private business. The arguments adduced were unconvincing. It was explained that this kind of insurance had to be done mainly through canvassers, numbering many tens of thousands. State insurance would be 'detrimental to the large army of insurance men throughout the United Kingdom',<sup>4</sup> who had to go 'from door to door and shop to shop in pursuit of proposals'. The memorandum cited a case in which twelve different agents were in competition for a premium of 4s. per annum. This picture and these arguments are not unfamiliar to those who have made a study of industrial assurance, past and present, where similar conditions prevail. So far as the Memorandum implied that competition kept rates low, it was misleading. Competition for this type of insurance business finds expression not in low rates but in a scramble to catch the single customer. Over-competition among agents in an overcrowded market increases overhead costs, and therefore insurance rates. Mr. Bullen, who spoke with authority, had no doubt that the

<sup>1</sup> Cf. Q. 1132-6.

<sup>2</sup> This was a Society founded by Mr. R. A. Yerburgh, M.P. (C.) for Chester, and others with the purposes of promoting co-operation in British agriculture on the plan of the co-operative movement in Ireland and Sir Horace Plunkett's successful organizations, cf. Hermann Levy, *Large Farms and Small Holdings*, 1907.

<sup>3</sup> Cf. Q. 568-70.

<sup>4</sup> Cf. *Farrer Report*, App. XII, p. 155.

Post Office might save 'a large proportion of the expense ratio that the insurance company must undergo'. His expert evidence deserved far more respectful attention than it received at the hands of the Committee.

Q. Do you charge (Federated Employers' Insurance Association, Manchester: Authors) a lower rate than the other insurance companies?

A. Yes, generally.

Q. Did you find that their rates were excessive?

A. Yes, as a whole. They differentiated so much that a man was rarely certain when he was covered.

Q. Did that apply to all insurance offices? Was there a tariff against the building trade?

A. Yes, practically. We tried several offices.

Q. Competition would not do?

A. No.

He stated that the first concern of some insurance companies was 'whether there is any way in which they can decline liability'. Many employers' liability policies did not cover all the risks to which the holders were legally liable. It was not to be expected that all or most employers should know the law or understand the nature of their liability under the Acts.

Generally speaking, the average insurance policy is so complex . . . that I can easily imagine the small employer becoming bewildered and refusing to have anything to do with it.

He strongly favoured an all-in policy and thought that it could well be formulated by the Post Office.<sup>1</sup>

As in 1903-4, there were complaints of pressure brought to bear upon workmen by agents of insurance offices. Miss Sanger declared:<sup>2</sup>

I do not know how far the head office is responsible for their agents coming round and pressing them by saying that they are going to stop paying the weekly payments and pressing them in one way or other. I have come across one or two cases where people unwilling to commute have been induced to do so by these means. . . . The insurance companies seem to regard it as very much to their interest to commute.

She showed how insurance companies had exploited the legal ignorance of the workers in cases of permanent disablement, having, to her knowledge, often attempted to exploit the distress of injured workers and their families immediately after an accident in order to settle for a small sum. There would be no point in such tactics under a Post Office scheme, particularly if it covered both Employers' Liability

<sup>1</sup> Cf. for Mr. Bullen's evidence *Farrer Report*, pp. 47-54. Cf. also A. 1418.

<sup>2</sup> A. 1462.

and Workmen's Compensation. Mr. Sidney Smith noted that insurance offices had charged treble premiums in the case of relatives employed, which seemed to him 'too high'.<sup>1</sup>

The case against private and voluntary insurance and in favour of compulsory state insurance was fully established by the evidence tendered to the Farrer Committee. The bias of its members, in keeping with the spirit of the time, prevented them from drawing the natural conclusion. It was mainly concerned with the possibilities of a Post Office scheme and seems, even in this respect, to have prejudged the issue. It did not even discuss an earlier suggestion of Mr. (later Sir Edward) Troup, cited by Mr. Bannatyne to the Farrer Committee, that the Post Office should offer annuities at low rates against a lump sum payable by the employer, who, in the case of a permanently disabled workman, would thus absolve himself and, in case of his death, his executors,<sup>2</sup> from obligation to pay an annuity for life. Mr. Bannatyne declared in his Memorandum that<sup>3</sup>

Even if it was not possible for the Post Office to offer annuities at much reduced rates, it would still be a boon for an employer to be able to purchase an annuity which would relieve him from further responsibility. Of course, he can pay the workman a lump sum, but in many cases he shrinks from doing so from the fear that it will be immediately squandered. Further, it would be much simpler for county court judges, when fixing sums to be paid on compulsory commutation, to direct the purchase of such an annuity than to be forced, as at present, to pay the money out by instalments directly from the court or to invest it in an annuity through the Post Office from the National Debt Commissioners, the payments of which require to be authorized from time to time by the Treasury, County Court Judge or Registrar.

On this proposal the Farrer Committee was silent. It limited its suggestions to the half-hearted measures of publicity already mentioned. Never, perhaps, has there been clearer evidence of the futility of a Committee which commences its work handicapped by prejudices and predilections which make it unable to draw logical deductions from evidence, however strong. Nor is there any stronger argument for the publication, simultaneously with the report of a Departmental Committee, of the evidence tendered to it.

<sup>1</sup> Cf. A. 2005.

<sup>2</sup> The prospect of an injured person continuing to receive a weekly payment on the death of the uninsured employer is small indeed and has given rise to many distressing cases of hardship.

<sup>3</sup> Cf. *Farrer Report*, p. 141.

## PART IV

### MODERN DEVELOPMENTS

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## CHAPTER VII

### THE HOLMAN GREGORY REPORT ANALYSED

#### I. THE SYSTEM: CRITICISM AND DEFENCE

Conscience, working through a great machinery of protective law, is endeavouring to guard the men and women and children of the Nation against the more outrageous forms of destruction: against the readiness with which the fear of destitution is pressing them into all forms of distorted, intolerable, poisonous pursuits. The Law is passed, the inspectors appointed, then the Nation turns to other interests in confidence that all is well.

C. F. G. MASTERMAN, *The Condition of England*.

WITH the passing of the Workmen's Compensation Act in 1906 the matters with which it dealt disappeared for nearly fourteen years from the parliamentary stage and, therefore, from the daily and periodical press, but continued to occupy members of both branches of the legal profession. The operation of the Act was carefully watched by trade union officials and by the Home Office. Defects soon became apparent and were remedied, so far as was possible without raising large and controversial issues, by a series of minor enactments, most of which deal with problems arising out of the Great War.<sup>1</sup> Under the Act of 1917, for example, passed as a consequence of rising prices, a totally disabled workman became entitled to 25s. instead of 20s. per week.<sup>2</sup> The Act of 1919 increased this sum to 35s. per week. In other respects, viz. in cases of partial disability, the pre-War scale of compensation remained unchanged.

War in the past has, by a strange paradox, generally disposed the public mind to pay greater attention to the social services. In war, as was once said by Frederick Naumann, a great advocate of Social Reform in Germany, the life of every soldier counts; recognition of the value of the individual life, however humble, creates the desire to devote more attention to the welfare of the individual who has ventured his life for his country. 'The forgotten man' is seen no longer as a member of a trade union, a voter, a farm worker, a miner, or one of the urban masses, the butt of facile generalizations. He becomes the

<sup>1</sup> Practically all the relevant legislation passed during this period has since been repealed, viz. Workmen's Compensation Act (Anglo-French Convention), 1909; Coal Mines Act, 1911 (1 & 2 Geo. V); Workmen's Compensation (Illegal Employment) Act, 1918; Workmen's Compensation (War Addition) Act, 1917; Workmen's Compensation (War Addition) Amendment Act, 1919. The last two enactments ceased for practical purposes to have effect after Dec. 31st 1923.

<sup>2</sup> Except by agreement between the parties, the extra 5s. could not be redeemed by a lump sum.

hero of the moment and appears in his true light as an individual, exposed, equally with his superior officers, to death or disablement, risking his life and health, 'to maintain', in the words of *Ecclesiasticus* (xxxviii. 34) 'the state of the world'. Mr. Lloyd George faithfully reflected public sentiment when he proclaimed the national ambition to make England a place 'fit for heroes to live in'. Nor is this tendency new. Frederick the Great's victories were followed by an ambitious programme of social reform, and Prince Bismarck's social legislation, which profoundly affected English thought and action for the next thirty years, was a direct consequence of the Franco-Prussian War of 1870.

Reference should also be made to the County Courts Act (9 & 10 Geo. V, c. 73), 1919, now embodied in the County Courts Act (24 & 25 Geo. V, c. 53), 1933, which includes many important provisions relating to the legal administration of Workmen's Compensation. But the most important development was the extension of the list of industrial diseases under Schedule III of the Act of 1906 (see p. 107). The Secretary of State, by Order dated Feb. 26th 1918, extended the provisions of Section 8 of the Act of 1906 to other diseases,<sup>1</sup> adding no less than twenty-four diseases or injuries to the six mentioned in the original Schedule. Arsenical poisoning, certain diseases arising out of the handling of arsenic or its preparations and compounds, miner's nystagmus (whether occurring in miners or others, and whether the symptom of oscillation of the eyeballs be present or not), chrome ulceration, several diseases created by dust, &c., were for the first time included.

Special legislation was enacted in 1918 enabling the Home Secretary to make and apply schemes for the payment of compensation to workmen in any specified industry or process or group of industries or processes exposed to silica dust. The first scheme of this kind was inaugurated in 1919.<sup>2</sup>

It is clear from this dry recital of legislative measures between 1906 and 1920 that, though the War precluded major legislation, the Home Office was alive to the need for development and was anxious to press forward when opportunity offered.

On May 13th 1919, before even the Treaty of Versailles had been ratified,<sup>3</sup> a Departmental Committee was appointed by the Home

<sup>1</sup> The orders of July 30th 1913, July 1st 1914, July 7th 1915, and May 6th 1916 were at the same time constituted and amended.

<sup>2</sup> Workmen's Compensation (Silicosis) Act, 1918. Cf. *First Report of the Deptl. Committee on Compensation for Silicosis, &c.*, 1924.

<sup>3</sup> The Treaty of Peace Act (9 & 10 Geo. V, c. 33), 1919, received the Royal Assent on July 31st 1919.

Office 'to inquire into the working of the present system of the payment of compensation to workmen for injuries sustained in the course of employment, and to consider and report whether it would be desirable to establish a system of accident insurance under the control and supervision of the State; and to report, further, what alterations to the law will be required to remedy defects which experience has disclosed or to give effect to their recommendations'. These Terms of Reference show that

1. The payment of compensation was not working well;
2. 'Experience' had disclosed definite 'defects';
3. The Government desired to ensure a careful and impartial investigation of a system of accident insurance under the control and supervision of the State—i.e. compulsory insurance—a question hitherto evaded by every Commission and Committee that had dealt with Employers' Liability and Workmen's Compensation.

The Terms of Reference reflected the national temper at the moment; the Prime Minister (Mr. Lloyd George), the Cabinet, Parliament, the trade unions, and the nation at large were at the moment ready for bold measures in this and in many other directions if inquiry demonstrated the need for drastic change.

The Terms of Reference went, indeed, far beyond the scope of the experimental Act of 1897 or of its staid successor, the Act of 1906. The new Committee's task, worthy indeed of a Royal Commission, was wider than that of any of its predecessors. It was able to draw upon the experience not of six but of over twenty years of the working of the Acts. Unlike its forerunners, the Committee had the support of a great body of well-informed and expert opinion, the sympathy of the Bench and Bar, the goodwill of the press and of the general public, which desired to see men partially or totally disabled by industrial accidents treated as generously as the victims of the battlefield. The Committee was specifically invited to consider the establishment of compulsory accident insurance under the control and supervision of the State—an alternative to the existing commercial system which its predecessors had not regarded as practical politics. Its achievements must be measured by its opportunities. Its Terms of Reference were wide; the time was propitious.

The Committee was composed of the following fourteen persons, of whom two resigned in the course of the inquiry and were not replaced:

1. Holman Gregory, Esq., K.C., M.P. (Lib.) (Chairman).
2. R. R. Bannatyne, Esq., C.B. (Assistant Secretary, Home Office).
3. Major A. C. Farquharson, M.D., M.P. (Lib.).
4. Reginald Guthrie, Esq.

5. Fred Hall, Esq., M.P. (Lab.).
6. [Edward Hopkinson, Esq., M.P. (Con.).]<sup>1</sup>
7. Sir Walter S. Kinnear, K.B.E.
8. J. C. McBride, Esq., M.B.E.
9. [Arthur Neal, Esq., M.P. (Lib.).]<sup>2</sup>
10. Tom Shaw, Esq., C.B.E., M.P. (Lab.).
11. Captain Albert Smith, M.P. (Lab.).
12. W. R. L. Trickett, Esq. (of the Treasury).<sup>3</sup>
13. John Taylor, Esq. (later Sir John Taylor).
14. Sir Alfred Watson, K.B.E., Govt. Actuary.<sup>4</sup>

*Secretary:* G. R. A. Buckland, of the Home Office: his place was taken after a few months by Mr. C. M. Knowles, also of the Home Office, a barrister-at-law.

There were thus originally, including the Chairman, seven Members of Parliament (of whom two resigned), four Civil Servants, and three unofficial persons.

#### Of the Members of Parliament

1. *Mr. (later Sir) Holman Gregory*, born in 1864, had just been elected as a Coalition Liberal for S. Derbyshire.<sup>5</sup> He practised as a solicitor at Bristol before being called to the Bar in 1897. He had taken silk in 1910 and was Recorder of Bath.
2. *Major A. C. Farquharson, R.A.M.C.*, had also just been elected as a Coalition Liberal. Was formerly in medical practice at Spennymoor in Co. Durham.
3. *Mr. Fred Hall* (he died in 1933) was 64 years of age. He had been M.P. for Normanton since 1906, and successively Treasurer and Agent of the Yorkshire Miners' Association since 1898. He started life in the Rotherham Collieries, was a J.P. and a County Councillor.
4. *Mr. Tom Shaw* started life as a tenter in a cotton mill and was Secretary of the Colne Weavers' Union and Vice-President of the Weavers' Amalgamated Union. He had represented Preston in the Labour interest since Dec. 1918. His broad outlook and patriotic views had great weight in Labour circles. He relinquished office as Director of National Service at Birmingham in order to stand for Parliament. He died in Sept. 1938.

<sup>1</sup> Resigned owing to ill health (he died in Jan. 1922).

<sup>2</sup> Resigned on appointment as Parliamentary Secretary to the Ministry of Transport.

<sup>3</sup> Vice Mr. C. L. Stocks, who resigned after appointment as General Secretary of the Royal Commission on the Universities of Oxford and Cambridge. He was absent owing to ill health from the outset.

<sup>4</sup> Appointed in Dec. 1919.

<sup>5</sup> He vacated the seat in 1922.

5. *Captain Albert Smith* was member of Parliament from 1910 for the old Clitheroe Division and Secretary of the Nelson Overlookers' Association and Mayor of Nelson 1908-10. He saw service in Gallipoli.

The four Civil Servants were: *Mr. R. R. Bannatyne, C.B.*, of the Home Office, to whose fine report to the Farrer Committee we have already referred. *Sir Walter Kinnear, K.B.E.*, Controller of the Insurance Department of the Ministry of Health and Deputy Chairman of the National Health Joint Committee. He was also Deputy Chairman of the Irish Insurance Commission and Chairman of the Navy and Army Fund. *Mr. W. R. L. Trickett* represented the Treasury throughout, and the late *Sir Alfred Watson*, then Government Actuary, joined the Committee in December.

The three unofficial persons represented employers or insurance interests: *Mr. R. Guthrie*, Secretary to the Northumberland and Durham Mine Owners' Association, and to the Mutual Indemnity Associations connected therewith. *Mr. J. C. McBride*, General Accident Manager of the Commercial Union Assurance Company. *Mr. John Taylor* was connected with various associations of employers in the cotton industry and, in particular, was Secretary of the Cotton Trade Insurance Association.

The employers and insurance companies were thus strongly represented on the Committee, on which the Civil Service element was also strong.

On the Parliamentary side it was weaker. The three Labour M.P.s were senior men with long records of good service, but seem to have taken little part in examining witnesses.<sup>1</sup>

Apart from the Chairman very few members of the Committee had any knowledge of the actual working of Workmen's Compensation proceedings in county courts. A county court judge or a registrar from an industrial area would have been able to check, in the light of his

<sup>1</sup> Of 142 questions put to Mr. Baker, representing the Miners' Federation, Mr. Guthrie put 56, Mr. McBride 23, the Chairman and Major Farquharson 21 each, Mr. Bannatyne 17, Mr. Shaw 4.

Of 483 questions put to Mr. Bunning, representing the Trades Union Congress, Mr. Neal put 198, the Chairman 57, Mr. Guthrie 52, Mr. Trickett 36, Sir W. Kinnear and Capt. Smith 27 each, Mr. Bannatyne 26, Mr. McBride 25, Major Farquharson 20, Mr. Shaw 15.

Of 233 questions put to Mr. Binns, representing the Mining Association of Great Britain, the Chairman put 132, Mr. Guthrie 28, Mr. Bannatyne 24, Mr. McBride 21, Sir W. Kinnear 17, Major Farquharson 6, Mr. Shaw 5.

Of 263 questions put to Judge Ruegg, Mr. Bannatyne, as Chairman, asked 97, Mr. Trickett 44, Mr. Guthrie 43, Sir W. Kinnear 42, Mr. McBride 31, Mr. Hall and Mr. Taylor 3 each.

own experience, the evidence given before the Committee by witnesses of either profession.

The Committee sat on 60 occasions and heard evidence from 108 witnesses. The employers were represented by various Trade Federations, by the Association of Chambers of Commerce, and by individual firms. The Parliamentary Committee of the Trades Union Congress, the General Federation of Trades Unions, the Parliamentary Committee of the Scottish Trade Union Congress, and representatives of individual trade unions were among those who stated the case for the workmen. The views of those concerned with the administration of the Act were expounded by English and Scottish witnesses representing the legal profession, county court judges and registrars, sheriffs, medical referees, and certifying surgeons. Insurance companies, mutual indemnity associations, and friendly and approved societies also gave evidence. Witnesses on behalf of the British Medical Association and the Charity Organization Society gave evidence on certain aspects of the matters under examination, and there was one witness from the U.S.A. Questionnaires were addressed to important bodies and 250 firms gave 'a voluntary expression of their individual views' as employers.

Of expert and collective views there was thus no lack, but no 'voluntary expression of their individual views' was sought or obtained from the injured and maimed workmen in whose interests the whole system was devised. It may, of course, be argued that the representatives of unions and other associations rightly claimed to speak on their behalf, but they represented then, and do now, only a small proportion of those who came within the scope of the Acts. The interests of members of large unions were safeguarded: those of non-unionists, and of the smaller unions, received less attention. Apart from this, however, the success or failure of the Workmen's Compensation Acts should be gauged by the extent to which they alleviate distress and provide for the effective rehabilitation of individuals as self-respecting and independent social units. Had members of the Committee, personally or by deputy, investigated a few hundred, or even a few scores, of individual cases and included some reference thereto in their Report, their own judgement, and that of the public, might have been profoundly modified.

In this respect the Holman Gregory Report, as we shall hereafter term it, differs greatly from some of its forerunners in the social field. The profound impression created by the Royal Commission on the Employment of Children, of 1840<sup>1</sup>—to quote a single example—was

<sup>1</sup> Cf. *Royal Commission on the Employment of Children* appointed in answer to a humble Address of the House of Commons on Aug. 4th 1840. Second Report, 1843, and subsequent Reports.

due not to the measured terms of their recommendations, but to the vivid narratives of individual members of the Commission and others, who made personal investigations in every part of England, and talked freely to children at work and to their parents. As Commissioners, they had power to examine upon oath, and to call before them 'all and singular Our Justices of the Peace, Sheriffs, Mayors, Bailiffs, Constables, Ministers, and all others Our loving Subjects whatsoever, . . . that they be assistant to you and each of you in the due execution of this Commission'.

The Commissioners reported that

Our first concern . . . was to divide the wide field of inquiry . . . into convenient districts; to assign to each district, from among the sub-Commissioners appointed by the Secretary of State for the Home Department, the person whose previous knowledge and pursuits . . . seemed best to qualify him for prosecuting the investigation.'

They or their sub-Commissioners visited every area; they went down scores of mines, they entered hundreds of factories. They talked to and recorded the evidence of many hundreds of boys and girls and their parents, as well as of employers, regardless of fatigue, which exacted a heavy toll from them all.

The outcome of this thorough system of investigation, so entirely unlike that of a modern departmental committee or Royal Commission, was that the Commissioners were able to report that the information obtained by them had been derived from

different classes of witnesses such as the proprietors, agents, and managers of works, the children and young persons engaged in different kinds of labour, the adult work-people, the parents of the children, medical men, teachers, ministers of religion, parochial officers connected with the administration of relief to the poor, police officers, and magistrates. These witnesses give evidence as to the state of affairs in their own districts, according to their own observation and experience, and the main body of information collected is derived from personal examinations . . . of these different classes of evidence.

Social investigators and government committees in the twentieth century have much to learn from the methods employed in this country a hundred years ago. The evidence obtained by the Commissioners was printed in full as a Parliamentary Paper, at a price which brought it within easy reach of a large circle of readers. The usual practice to-day is to suppress it, ostensibly on grounds of cost, though the net cost to the Treasury of publishing the evidence of departmental committees is never more than £300 or £400 and seldom more than £200.<sup>1</sup>

In contrast to this Report, and to the equally classic Reports of

<sup>1</sup> *Debates H.C.*, April 14th 1938, col. 1390.

Dr. Chadwick and others, covering the same and subsequent decades,<sup>1</sup> the Holman Gregory Report leaves upon the reader's mind the impression of a careful summary and a valuable criticism of the legal problems involved, by highly competent and experienced men, concluding with skilfully drafted proposals for remedying existing deficiencies and avoiding pitfalls and difficulties which experience has shown to exist, without any substantial modification of the present statutory framework. It does not, however, disclose, and indeed barely refers to, the social environment in which the Acts operate. Nor does it disclose or discuss in detail the real origins of hardship, the aggregation of which in particular trades and localities is the focal point of the continuous demand for radical reforms.

The point to which the Committee first directed its attention and which it placed at the head of its findings was whether any change in the present system of insurance was necessary. To show that no change was at the time required appears indeed to have been its first concern. It declared itself satisfied that

(1) Insurance with an Insurance Company or a Mutual Association is a popular medium among employers in the United Kingdom for covering their workmen's risk.

(2) Employers generally have a preference for private enterprise rather than State Management.

(3) There is a general feeling among employers that the administration of Workmen's Compensation by the State must necessarily tend to become rigid in character and slow in mechanism, and that owing to the lack of competitive interest it may easily become inefficient and expensive.

(4) The administration of a Workmen's Compensation Act necessarily involves many disputes of law and fact, and it is not desirable for the State to enter a sphere of administration involving disputes with workmen which frequently become subject to litigation.

(5) The workmen's representatives, while strongly in favour of a State scheme, were emphatic in their opposition to any proposal that they should be called upon to contribute to any State Fund, even for the purpose of providing additional benefits.

We shall discuss later how far these conclusions were justified by the evidence. The conclusion that 'employers generally have a preference for private enterprise' might well have been assumed in advance by the Committee, but recommendations as to the expediency or otherwise of state intervention should have been based not upon the *ex parte* views of those concerned to uphold the existing system, but upon a careful and dispassionate examination of as large a number of cases as possible in which the existing system was alleged, on whatever grounds, to have proved defective. In reversing the process the

<sup>1</sup> Cf. Wilson and Levy, *Burial Reform and Funeral Costs*, 1938, pp. 26-7.

Committee, in their collective capacity, may be likened to a doctor who, before having diagnosed the nature and gravity of his patient's complaint, proclaims his disbelief in the need for a major operation. The conclusions of the Committee would carry greater weight to-day had their inquiries, and their Report, commenced with a full analysis of the existing system and of its effects, in practice, upon the workman and his family, and had the Committee thereafter proceeded to a critical review of the 'existing system' of insurance in this country in the light of their experience and of the practice in the Dominions and in certain European countries. Without such a factual background, an analysis of the system, however experienced the critics, cannot now be, and should never have been, regarded as an adequate basis for legislation.

We propose, therefore, before discussing administrative aspects, to endeavour to give a fair presentation of what seems to us the predominant view of the witnesses heard by the Committee, so far as concerned the main grievances of injured workmen, arising from the actual working of the Acts, or the general conditions of compensation, excluding, for the present, such points as the scale of benefits or the definition of diseases.

One of the tasks of the Committee was to get a clear picture of the relation of insurance offices to the operation of the Acts. On this subject Mr. T. M. Smith, a member of the Emergency Committee of the Manufacturers' Section of the London Chamber of Commerce, representing about 1,500 employers of labour in all branches of manufacture, spoke with authority. He expressed the strongest dislike of any government interference.

We have been satisfied [he declared] with the way in which insurance companies have dealt with our insured workmen; we have many instances of generous settlements in compensation for accidents. This being so, I am of the opinion that it would be against our interests as employers if the Government would take over the insurance under the Workmen's Compensation Act.

This was apparently one of the statements on which the Committee based its conclusions as to the undesirability of state control. Mr. Smith's statement revealed a notable community of interests between employers and insurance offices, for he explained that

when you go for a renewal of your premium they (the insurance offices) tell you that you have to pay so much premium for the year, that the accidents have cost them so much, and they raise or lower the premium accordingly. Therefore, if an insurance company is too liberal it causes a higher premium.<sup>1</sup>

No mention was made of the interest of the workmen, who may fairly be regarded, in view of the preamble of the Act, as primarily

<sup>1</sup> Cf. A. 14363-4.

concerned in the manner and scales of disbursement of compensation. In thus proclaiming the community of interest between employers and insurance offices in regard to the disbursements under the Acts, the witness was in fact making a strong point in favour of administration by the State of Workmen's Compensation, but he was not cross-questioned on the subject, and the question as to how far employers and insurance offices made common cause at the expense of the workman was not touched upon in the Report. The fact that employers were satisfied with the insurance offices was taken by the Committee as proof positive that claims were satisfactorily met, though there is no evidence that any of the witnesses on behalf of employers had personal knowledge of individual cases of injured workmen or of the effect of the Acts upon them or their families. Yet the evidence of Mr. Smith, after his preliminary and doubtless well-considered statement, took a different colour under cross-examination by Mr. Bannatyne of the Home Office:

Q. 14625. You regard all these statements about harsh treatment by insurance companies as mythical?

A. No, my point is that they are not dealing with a sympathetic office.

Q. 14626. You limit it to sympathetic offices?

A. Absolutely.

Q. 14627. You put it in a much more general form in your proof.

A. I say this, that if you have had a lot of workpeople who say they have not been dealt with as they should have been dealt with, they have been dealt with by an unsympathetic office. It has been my fortune to deal with sympathetic offices.

The Committee did not refer to this evidence in its Report, in rebuttal of the assertions of the employers as to the efficiency of private insurance, nor did they inquire which offices were 'sympathetic' offices, and what proportion they bore to those which were 'unsympathetic'; nor did they make inquiry as to the factors upon which sympathy or lack of sympathy depended, and as to its effect upon the injured workman or his family. Some witnesses gave instances of the generosity of insurance offices; but in general it was admitted that generosity was a matter of expediency rather than of justice.<sup>1</sup> To what extent generosity was practised when neither the employer nor public opinion exercised pressure upon an insurance company was not revealed. Another employer's witness, Mr. W. Hall, representing Sir W. G. Armstrong, Whitworth & Co., took a very different view. His company having been in a position from the outset to carry their own

<sup>1</sup> Cf. A. 15927: 'I told the Insurance Company that I wanted them to look at it in a broad way and make a liberal offer, . . . the boy had lost his hand, it could never be put back again, and the feeling in the works naturally would be that if the boy got nothing it would be very rough on him.'

insurance, he was able to speak frankly. His opinion, as the representative of one of the biggest manufacturing concerns in the country, that . . . insurance companies have brought workmen's compensation into disrepute. They are out for profit,

deserved attention at the hands of the Committee when framing their Report. A member of the Committee, Mr. Guthrie, representing employers, described the statement, from the Chair, as 'very sweeping', and it was suggested to the witness that he should withdraw his contention<sup>1</sup> in view of the fact that 'the insurance companies who do this business have other very large insurance with your firm'. The question of 'sympathetic' and 'unsympathetic' offices was not raised.

Even with representatives of employers, who could not be expected to make complaints in public against the offices in which they were insured, or to view schemes of State interference with approval, opinion was not unanimously favourable to the existing system. An important independent witness, with wide social and administrative experience, was Mr. (later Sir) Francis Askew, M.P., an ex-Mayor of Hull, Past President of the National Council of Friendly Societies, and General Secretary of the United Ancient Order of Druids' approved Friendly Society. He had been asked to give evidence on behalf of the Joint Committee of Approved Societies. His statement included the following passage:<sup>2</sup>

Many claims are at present contested by employers, or by Joint Stock Companies with whom the employer has insured the risk, which should have properly been admitted. Where the workman elects to litigate he incurs legal expenses which cannot be recovered in full from the unsuccessful party. Where he does not elect to litigate (oft-times because of the expenses involved) the Assurance Company reaps an added profit. Perhaps on that point I might refer to a case that a branch of my own Society recently took up for a member. It was a case against an engineering firm, and on advice we took the matter up in the interests of the member before the Brigg County Court. The judge decided against the claim. The solicitor advising my branch concerned felt satisfied it was a strong case and that the claim ought not to be refused. Accordingly the branch of the Society took the case to the High Court for a new trial, a proceeding that involved the branch of the Society in considerable expense. The High Court, after two days' hearing, granted a new trial at the Doncaster Court. At the Doncaster Court, after a lengthy hearing, the Judge gave a decision in favour of the claimant.

The witness added that had not the branch been 'prepared to contest the case, which was very strong, the man would never have got his rights'. Cases of this kind, in which justice was only secured by the intervention of associations assuming on behalf of the injured person

<sup>1</sup> Cf. Q. 7861-2, and 8015-23.

<sup>2</sup> Cf. A. 9913.

the risk and expense of litigation, are common. Far more frequent are those cases in which the injured party can obtain no redress, either because he does not belong to a powerful trade union or association, or because his case is not 'very strong', or because his financial or domestic circumstances preclude legal action on his part. The Committee gave prominence to the objections of employers to state administration or intervention. It repeated, and by implication endorsed, their assertion that state administration of Workmen's Compensation 'must necessarily tend to become rigid in character'.<sup>1</sup> As to the fair and prompt settlement of justified claims by a State agency, the Report was silent. Sir Walter Kinnear and Sir Alfred Watson, both with great experience of the administration of National Health Insurance, Unemployment Insurance, and Old Age Pensions, seem to have accepted in silence the imputation cast upon the administration of these services and, by implication, to have assented to the view that injured persons, or the families of deceased persons, would be better off if left to commercial insurance companies which if 'sympathetic' might occasionally be 'generous'. It does not seem to have occurred to the Committee that the lack of rigidity ascribed to commercial offices was bound to work both ways. In special cases it might inure to the benefit of the workman, but, as suggested by Mr. T. M. Smith, it would certainly be to his detriment in the absence of special circumstances, and still more so if insurance companies or mutual associations should feel it to their interest to make common cause and to contest, for whatever reason, a particular claim or class of claims. The Report omitted Mr. Askew's further evidence on the point:

Q. 9951. Does it follow that because an insurer works for profit that workmen's claims are not properly paid?

A. I do not know that it follows, but it is a matter of experience that liability is generally repudiated at the beginning.

Q. 9952. Do you mean to say that the companies generally repudiate their liabilities?

A. I would not say they generally repudiate them. I know as a matter of experience they frequently repudiate them in cases where there have been very strong claims.

Q. 9953. The employer pays a premium for his insurance: is it not reasonable to suppose that he expects good service for his premium?

A. I believe, as a matter of experience, where claims appear to be numerous the company is likely to ask for higher premiums.

The witness was then asked whether the employer would really acquiesce if his insurance office did not in practice accept the liabilities

<sup>1</sup> Cf. A. 13735, 14607, 17027, and others endorsing the employers' evidence. Employers' representatives contended that insurance companies had paid 'many a claim' when both they themselves and the employers were satisfied that there had been no liability at all.

which they had contracted on his behalf to assume. Would an employer risk unpopularity among his workmen in order to please the insurance offices? Would not the insurance company run the risk of losing the business in question? Mr. Askew, giving chapter and verse for his views, replied:

I cannot speak for employers, but I know as a matter of experience that the employed person does not get justice unless he presses very keenly his claim, and then he may be reminded that he can go elsewhere for his employment if he is not satisfied.<sup>1</sup>

Mr. Askew offered to supply details of such cases: if the Committee accepted the offer they did not publish them.<sup>2</sup> The Committee of 1904 adopted a more impartial policy, and published some valuable factual material as Appendices, which are absent from the Holman Gregory Report.

If the views as to commercial insurance offices adduced by employers were not uniformly favourable, and those of an experienced representative of friendly societies even less so, those witnesses who represented organized labour were outspokenly unfavourable, and their attitude should have carried weight. The average employer and, in particular, the smaller employers are of necessity mainly concerned with their liability. They are rightly satisfied if an insurance office assumes their legal liabilities upon lines which, in general, appear fair and reasonable. The argument that compulsory insurance might drive a wedge between employers and employees by lessening the feeling of responsibility of employers in regard to the welfare of their workmen has some, though not much, weight, but it is unreasonable to use it as an argument against the practice of insurance. The evidence given by employers before the Holman Gregory Committee in favour of private insurance administration, coupled with the repeated assertion that employers were fully satisfied with the existing system, shows by its one-sidedness that former apprehensions were not quite ungrounded. Employers' representatives did not look at the matter from the point of view of those in whose interests the inquiry had been instituted. The Committee itself appeared to share their views and were at pains to give it prominence. We must therefore now deal comprehensively with the evidence on this point given by the representatives of labour before the Committee.

Workmen's representatives were not altogether dissatisfied with the behaviour of insurance bodies. Thus Mr. George Barker, representing the Miners' Federation of Great Britain, said:<sup>3</sup>

We have not had a great deal of friction with insurance companies, but we have had cases where we could have come to terms with the colliery companies, but the

<sup>1</sup> Cf. A. 9959.

<sup>2</sup> A. 9962.

<sup>3</sup> Cf. Q. 1913-16.

insurance people have not been prepared to go so far as the companies and the cases have gone into court. We have had that especially in dependency cases where the amount of compensation is very often in dispute. Sometimes insurance companies have driven us into court when we could have settled with the owners.

But, he added, 'the principle of State insurance would be better than the present system', again emphasizing that it was sometimes 'not the company that we have been fighting but an insurance company'.

These were fair-minded witnesses giving credit where it was due, not condemning the system—however contrary to their principles—so far as it worked well, but stressing the existence of defects which told against its continuance. Insurance companies had probably dealt fairly with most claims, but the trade union evidence showed that there were many exceptions. That their evidence on this subject was critically received by the members of the Committee who cross-examined them emerges from the interrogation of Mr. W. Shaw, Chairman of the Scottish Trades Union Congress, Mr. Robert Simpson, of the Shale Miners, and Mr. Joe Houghton, of the Scottish Union of Dock Labourers. Mr. Shaw declared 'that almost every case is contested, not by employers, but by Insurance Companies, with the result that the Workmen's Compensation Act, supposed to have been quite clear at its inception, has become complicated and difficult to work, due, we believe, largely to the Insurance Companies contesting claims of workmen for compensation'.<sup>1</sup>

He quoted cases and assured the Committee that, if given time, he 'could give quite a number'. A workman had been injured as the result of a fall from a building. He had received three weeks' compensation; when he happened to call at the insurance company's office for payment instead of at the employer's office, the insurance company's representative offered him a sum of money which he agreed to accept. He later told the witness, who found that the insurance company's representative had simply taken advantage of the workman's innocence or ignorance of the Act and that he, having accepted the sum of money, had renounced any further claim to compensation. He added that the sum the man accepted was £5, and he was ill for nine weeks afterwards.

In another case a man lost three fingers of his right hand in an industrial accident. After his fingers were healed the insurance company tried to induce the man to agree, in face of the fact that a Memorandum of Agreement was recorded, that he was able to go back to work. The man, however, was totally unfit to follow the occupation that he had been in formerly. He was a joiner. The result was that he went on for weeks on compensation; what the insurance company were actually doing was trying to starve this man into accepting a small

sum of money. Had his union not been behind him he certainly would have gone under. He came out with £285 for a final settlement, but he would not have got £80 if the insurance company had gained their point.<sup>1</sup> When the Chairman, Mr. Holman Gregory, cautiously asked the witness whether there was 'any suggestion that workmen suffer today in consequence of the insurance being with private companies', the witness replied:<sup>2</sup>

The strongest argument, I think, that can be used against private insurance companies is the complicated state in which this Act has now got. . . . If you have an accident and a workman injured you have to refer to cases that have been decided as precedents for the purpose of guidance. If we take some of the decisions of the Act we find that the language of the Statute must be interpreted in its ordinary and popular meaning; then they go on to construe the word 'accident'; then they go on to refer to *Ruegg on Workmen's Compensation Acts*; then they go on to show how the insurance companies have employed the legal profession, if I may put it in that way, for the purpose of meeting every claim of compensation. The result is that these decisions, in our opinion, have made the Act so cumbersome and so difficult to understand from the Trade Union's standpoint that we think it would be very much better, if it was taken out of the hands of insurance companies altogether and put under the Ministry of Health. . . .

Corroborating Mr. Shaw's views, Mr. Houghton observed:

The chief business of an insurance company appears to be how to get rid of the man without paying compensation, although his case might be quite a good one. The incentive is to safeguard the interests of the employer at all costs, to the detriment of the man whose case may come up. We certainly think that a more sympathetic view is required, and that the real spirit and intention of the Workmen's Compensation Act should be in the hands of a Department who are not so self interested in saving money as an insurance company.

The attitude of the Committee towards these witnesses is surprising. They did not press witnesses for further illustrations of the workmen's grievances, but sought to refute by leading questions the views which the representatives of the workmen had formed as to the administrative changes that seemed to them to be needed, in the light of experience.

The impression left upon us, by a close study of the evidence, is that the witnesses found the Committee as a whole unsympathetic. They were on occasions cross-examined by one member of the Committee (Mr. Guthrie) in a manner reminiscent of counsel briefed for 'the other side'; witness the following encounter:

Q. 244 (Mr. Guthrie). With regard to your accusations against insurance companies you may say their object is to reduce the burden borne by the employer, and to escape liability. They would not reduce the burden borne by the employer by entering into useless litigation which must fail, would they?

<sup>1</sup> Cf. A. 22.

<sup>2</sup> A. 21.

A. (Mr. Shaw). No, but they sometimes do that sort of thing, and win. That is just where the workman would come in, so far as administration under the Ministry of Health is concerned. The chief point I want to make in connection with insurance companies is this. It is not so much the companies who endeavour, as far as possible, to restrict the payment of compensation, either for partial or total disablements, as those who are in the service of the companies. As a matter of fact, that is what they are for.

Q. 245. They are paid to administer the Act with regard to employers?

A. On behalf of the insurance companies.

Q. 246. On behalf of their employers, who are insurance companies, and we must assume that they administer the Act fairly within their rights. They may take different views?

A. They do it from a business point of view, which is different from the point of view of workmen.

Q. 247. They are not going to reduce the employer's burden by forcing him into litigation which cannot succeed?

A. No.

Q. 248. They would be increasing his burden?

A. (Mr. Simpson). But they will be increasing their own profits if they can manœuvre the workman into a certain position. If you want evidence with regard to that you can have it now. I can give you evidence as to what insurance companies do.

Q. 249. With regard to the instance you gave of the man who lost his thumb, I can quite see that a skilled joiner would not be able to resume his occupation.

A. (Mr. Shaw). No.

Q. 250. But many men may take other employment, do they not? Is it not to the advantage of the man himself that he should get employment rather than remain idle?

A. That is a point with regard to insurance companies. That is the attitude they adopt. They declare that a man is fit for light work: the man refuses to go to light work, and his compensation is stopped right away. But supposing he takes on light work, I have known of cases being taken into Court after that, and the man's compensation being reduced. Of course he could have worked at other light employment right away.

Q. 251. That is my point.

A. But we are putting up the case in the direction of showing that if a man's earning capacity has been reduced in his own particular trade he has suffered a great loss for which he should be compensated.

This and other cross-examinations reveal a pronounced tendency on the part of some members of the Committee to question the validity of the complaints made against insurance companies, but no corresponding desire to consider such complaints in detail or to consider at length the remedies suggested. One of the questions above quoted goes so far as to suggest that insurance companies would do all in their power to avoid litigation in order to save costs—and the simple

answer of the witness, that such litigation, if successful, might equally save expense to the insurance offices and, indirectly, to employers by limiting their liability in a particular category of cases, did not meet with appreciative comment from the original questioner.

The attitude of the Committee towards these witnesses representative of labour organizations contrasts sharply with that adopted when the representatives of employers were heard. Statements that insurance offices were dealing with claims to the satisfaction alike of employers and employed persons were accepted almost without criticism and not contrasted with previous testimony of labour representatives.

Miss Susan Lawrence, on behalf of the National Federation of Women Workers, said that insurance companies 'speaking generally act quite fairly about weekly compensation', but 'very harshly with regard to lump sum payments'.<sup>1</sup> The Chairman at once joined issue with her, asserting that 'instances would not quite meet the point', and pressing the witness to give the percentage figure, which, of course, the witness could not supply, 'to get the extent of the evil'. The witness reiterated that 'in at least 95 per cent. of the cases you get more than they offer in the first instance'; the Chairman was still reluctant to accept her view, adding:

Q. 673. That is bargaining. I want you to draw the mental distinction between bargaining which is not unfair and a final settlement which is unfair.

This ingenious distinction is better suited to a metaphysical debate than to an inquiry into the effects of social legislation. For legislative purposes it matters little whether any given bargain is legally admissible or not. The very unequal position of the injured is, in itself, likely to lead to unfair bargaining culminating in an inequitable settlement. Meanwhile it will be recollected (see p. 26) that other distinguished lawyers, holding high judicial offices, adopted an equally fallacious view, when they assumed the existence of an 'agreement' as the contractual basis of the mutual relations of an individual and his employer, whereas, in fact, such agreements had no existence in real life but were mental pictures, conceived in the minds and delineated by the pens of lawyers and judges, but wholly alien to the parties before them. It is a further example of the frame of mind which evolved the doctrine of common employment, which most lawyers to-day regard as bad law in its origin and indefensible in its application. The incident illustrates the limitations inherent in inquiries into social legislation conducted by lawyers, however impartial and skilled in the law. Imagination seldom transcends experience, and a very different type of experience is necessary to assess the possible remedies for defects in social legislation.

<sup>1</sup> Cf. A. 626, also the same witness. A. 668 sqq.

Before we leave the subject Miss Susan Lawrence's reply should be recorded:

A. 673. Here is a case: A girl, with a broken left arm; they offered her £16.

We said 'Nonsense'. They then said £75, and we got £120. There is a clear case where, if the worker had been alone, she would have taken £16, and we got £120.

The Chairman hastily observed that 'individual cases' did not interest him 'at the moment' and, when told by the witness that she had known cases recorded before a county court judge which, in her opinion, were quite inadequate and which were less than she would have got had the case been entrusted to her, the Chairman merely asked:<sup>1</sup>

Can you suggest any better method than that?

To which Miss Lawrence replied:

I imagine there is behind these companies a natural desire to show a profit, and that is at the root of this extreme stiffness with regard to the lump sum payment.

Mr. G. H. Stuart-Bunning, Chairman of the Parliamentary Committee of the Trades Union Congress, emphasized that 'there are complaints against Insurance Companies, but they arise chiefly from unorganised workers'. He gave it as his opinion that

there is no doubt whatever that Insurance Companies, or the people who work for Insurance Companies, do take advantage of workpeople who are not organised, and that it was more difficult to deal with small uninsured employers than with large insurance companies if 'the man is backed up by a strong trade union'. The cross-examination was again directed to weaken the force of his assertions:

Q. 1277. . . . you are rather inclined to think that while Insurance Companies deal perfectly fairly with organised Trade Unions, they may occasionally take advantage of unorganised workers?

Not to be led, the witness replied:

A. I put it more strongly than that. I said they did.

He was not further questioned.

He later agreed that where workmen had the union behind them insurance companies dealt 'very satisfactorily' with claims.<sup>2</sup> The Committee did not, at this point, press for 'percentages'. Yet the total membership (males and females) of trade unions in Great Britain and Northern Ireland at the end of the year 1920 was 8,346,000,<sup>3</sup> and

<sup>1</sup> Q. 682.

<sup>2</sup> Cf. A. 1432.

<sup>3</sup> It is now 5,308,000 (prov.); *Statistical Abstract*, 1936, Cmd. 5627, p. 147.

though trade unions are strongest in those occupations in which accidents are commonest, a substantial proportion of accidents occur to unorganized workers, particularly in agriculture. The total number of workers within the scope of Workmen's Compensation Acts in 1920 was about 15,000,000, a fact which the Report mentioned, adding that 'settlement of the claims of those who belong to organised labour is an important part of the work of Trade Union Officials'.<sup>1</sup> The omission of any reference to the fact that nearly half the total number of persons covered by the Acts were members of no union at all is hard to explain; it would have made the Committee's statement appear in a very different light.

Evidence on similar lines, dealing not only with commercial insurance offices but with mutual associations, was given on behalf of the National Sailors' and Firemen's Union by Mr. Henson, who was particularly hostile to the mutual associations:<sup>2</sup> 'So long as the men keep themselves in benefit with their Unions, and consult their local secretaries before committing themselves to agreements, there is little danger of those being taken advantage of, either wittingly or unwittingly, by the insurance companies. I have therefore no complaint against the ordinary insurance company, but we regard all the Employers' Associations with distrust.' He held it better to deal with profit-making insurance companies than with associations of employers, which 'tend to become a law to themselves'. The intervention of the Shipping Federation and its officials was 'with certain exceptions unfavourable, if not directly antagonistic, to the claims and interests of injured seamen, and to the dependants of deceased seamen'.

The Committee reported separately as to insurance companies and mutual associations; but made no reference to the testimony of this witness, who deserved full consideration as the accredited representative of a great body of men.

Mr. Samuel Chorlton, on behalf of the National Union of Railwaymen, stressed the same point. He was against making private business interests responsible for Workmen's Compensation. 'A workman with no assistance can be easily misled when having to negotiate with a private firm or when the private firm intercedes in regard to his insurance and attempts negotiations with the injured workman, which is frequently done.' On being told by the Chairman that railway companies were self-insurers—a fact which was likely to make his statement appear of less importance—he retorted that his opinion rested upon facts within his experience, for there were thousands of men in railway unions who had ceased to be employed on railways but still retained membership of their old union. Delay in the settlement

<sup>1</sup> Cf. *Report*, p. 4.

<sup>2</sup> Cf. Q. 2362-5.

of claims (we have already noted that such delay may be financially advantageous to insurance offices) caused 'many men' to 'suffer considerable financial inconvenience',<sup>1</sup> a complaint which extended also to compensation payments by railway companies. The witness urged a system of state administration of Workmen's Compensation.

You would still have the bargaining by State insurance, would you not? asked a member of the Committee, but he stuck to his point:

I cannot conceive, under State insurance and investigation by a State representative, that the desire for bargaining and profit could accentuate itself to the extent that it does now.

He later explained how this sort of 'bargaining' went on—a description which might have saved Mr. Holman Gregory from propounding his theory of the 'fairness' of 'mental' bargaining. He concluded with the comprehensive observation:<sup>2</sup>

All lump sum settlements in connection with the Compensation Act are speculation.

The Committee became interested and highly critical, propounding such questions as 'When two people are bargaining, each side tries to get the best terms possible?'—or 'They must bargain?'—or 'Each side endeavours to make the best terms it can. There is no objection to that', and so on.<sup>3</sup> Mr. Bannatyne alone was sympathetic:

You say it depends on the spirit with which the bargaining negotiations are entered upon?<sup>4</sup>

—a suggestion, rather than a question, to which the witness assented. His colleagues on the Committee were, however, fully satisfied with the fact that 'bargaining' was legal, lawful, and unassailable, shutting their eyes to the social and economic inequity in the balance of such details just as, some decades earlier, those opposing the workmen's case had proclaimed the existence of a 'contract of labour' whereunder the workman assumed all the risks inherent in his employment. Judging from most of the questions put in the course of the inquiry, the majority of the Committee seem to have grown up in the same school of thought.

The list of witnesses giving evidence against insurance companies is not yet exhausted. Mr. Frank Smith, speaking for the Federation of Shipbuilding Trades, representing approximately 1,000,000 workers, on being asked whether the system of 'sick visitors' used by approved societies under the National Health Insurance Schemes

<sup>1</sup> Cf. Q. 2528–36.

<sup>3</sup> Q. 2715–16, 2721.

<sup>2</sup> Cf. A. 2712.

<sup>4</sup> Q. 2722.

could not be applied to Workmen's Compensation, replied that this was already done by insurance companies. 'Through the doctors mostly?' he was asked, and replied:<sup>1</sup> 'And without doctors too. All insurance companies are not alike, but if you knew what some of these agents for insurance companies get up to, you would be of the same opinion as myself; you would not allow them to have anything to do with it, because, after all, they are out to pay as little as they can.'

The questioner, Major Farquharson, M.D., M.P., did not seem anxious 'to know' more on this subject, for he declared, in his next question, that the point he was interested in was quite another one!

Then came the evidence of Mr. John Whittle, a solicitor of Preston, who had conducted Workmen's Compensation cases for many trade unions and branches; he came before the Committee in his private capacity and not as the mouthpiece of the unions, and wished simply to give his own experience of the working of the Act. His opinion was clear. We quote in full:

Q. 4134. Have you, yourself, had any experience of unfair treatment of workmen by Insurance Companies?

A. I might say I have had many cases, especially during the last two years, one Insurance Company in particular, with a large connection, making the greatest possible use of present conditions to further their own ends.

Q. 4135. What do you mean by that?

A. They take advantage.

Q. Of the technicalities of the Act?

A. No. They take advantage of the high cost of living, and they will keep a man on compensation for an indefinite period on a sum of, say, 25s. a week, and so try to force him to accept a much smaller lump sum in redemption than the Act would give him. They ask a man who has lost his eye to take £30, £40, £50, or £60, whereas the more generous Insurance Company will give as much as £300.

The point was not further pursued by the Chairman.

Questioned as to the treatment of doubtful cases, Mr. Whittle asserted that, in his experience, insurance companies dealt with them in a 'fairly generous way', but there were 'exceptions'. His evidence, as that of other witnesses already quoted, left no doubt as to the wide diversity in the spirit and in the practice of insurance companies. Asked whether it was not the practice of insurance companies to encourage employers, when they settle, to take the man back to work —'You do not find them throwing obstacles in the way of his employment?'—Mr. Whittle answered:

I have known an Insurance Company ask me whether it was intended that the man should go back, or whether it was intended that he should start in business,

<sup>1</sup> Cf. Q. 3014-7.

because they said they would rather have a declaration of liability if the man was going back than have a man already disabled going in again and incurring further risk.<sup>1</sup>

The evidence of the Secretary of the General Federation of Trade Unions, Mr. W. A. Appleton, C.B.E., stressed the same point. 'It is in the interests of the companies to press down the claims', he declared; 'it is also in the interests of the employers to do so, because they realise that their premiums may increase . . . I have had experience of insurance companies taking advantage of the ignorance of the persons applying for the money. I may say I have got £60 for a lost finger and I have seen somebody coming out with £20 for death.' Mr. Appleton did not think that grievances of this kind could be abolished by mere amendments of the law. He strongly recommended some 'form of control, in which people themselves have faith'.<sup>2</sup> He expressed his doubt as to whether the Committee would succeed 'in making the Act what we all want to make it'.

Another important witness, appearing for the Trades Union Congress Parliamentary Committee, was Mr. (later Sir) James Sexton, C.B.E., M.P., who had unrivalled experience as a trade union official in connexion with 'Dockers' cases in Liverpool. In view of the fact that the majority of the cases in which he was concerned must have been against the Shipping Federation, his evidence is of particular interest. Witnesses before the Committee had expressed the view that where the workman was backed by his union the danger of being defrauded of his rights and benefits under existing legislation was lessened, and members of the Committee had stressed this in their questions, apparently eager to satisfy themselves, and others, that the existence of the unions deprived complaints as to the conduct of insurance companies of serious importance. The evidence of Mr. Sexton gave them no encouragement, for it showed that, quite apart from the question of union or non-union workers, representatives of unions were far from satisfied with the system of private insurance. Mr. Sexton said:<sup>3</sup>

At the very slightest excuse they (the Insurance Companies) compel a man to undergo a medical examination, and the thing gets so nauseous to the man sometimes that he may refuse to go, and then they cut him off. That means we have another law case. We go to the Court; there is a hearing before the Judge, and the Judge orders the man to go. All that costs the Unions money.

Mr. Sexton further made it clear that it was even more detrimental to the worker's interest when he was visited by the 'touts of the offices' in the hospital and persuaded to enter an agreement unfavourable to

<sup>1</sup> Q. 3272.

<sup>2</sup> Cf. Q. 3495-502.

<sup>3</sup> Cf. A. 3860.

him. 'They prey upon the ignorance of the man as to the law, and the fear is held out to him—no threat, but by inference it is said: "Now, you know you must not go to the law in this case; if you do you will be on the stones", or something to that effect.'<sup>1</sup> Asked whether he found that insurance companies raised questions of liability in order to force a settlement, Mr. Sexton replied:<sup>2</sup> 'Every opportunity they can get they take.' Mr. Sexton had no complaints as to punctual payment of claims by insurance companies; what he complained of was the 'method of payment'. 'They take every unwarrantable objection, and watch every opportunity to cut off the man's compensation . . . they are all tarred with the same brush.' The witness left no doubt about his opinion that employers generally were acting in collaboration with the insurance offices. He condemned the system of private insurance which was fundamental in the Act,<sup>3</sup> and though, in common with other witnesses, he admitted no clear-cut differentiation between the practices of the respective organizations, he explained that his aspersions related mainly to mutual insurance offices and not exclusively to insurance companies, a point which, in Mr. McBride's opinion, needed some clearing up as the witness had been 'rather hard on Insurance Offices'.<sup>4</sup>

Of all the witnesses heard in criticism of the Acts from the workman's point of view, only two were not entirely unfavourable to private insurance, either by companies or mutual associations,<sup>5</sup> and considered the compensation business, as conducted by the offices, 'fairly reasonable'. The vast majority resented the way this business was administered. Their complaints were not directed against the commercial methods of insurance offices—mutual or non-mutual—so far as the actual payment for undisputed claims or agreed obligations went; but this was not the point at stake. The burning evil was that, under the system as it was then and is now, insurance offices did all they could to reduce claims, to persuade workmen to accept unfavourable terms, to dispute obligations, and to entangle the other party, not infrequently, in unnecessary litigation. Intermediaries of insurance offices did not hesitate to exert pressure in order to prevent prospective beneficiaries from obtaining the full benefits secured to them by legislation. The working classes were convinced that no 'sympathetic' spirit could be expected from insurance offices or, so far as they felt themselves bound to them by some community of interest, from employers, who might be more sympathetic under another system of insurance.

<sup>1</sup> Cf. A. 3858.

<sup>2</sup> Cf. A. 3861, also A. 3892.

<sup>3</sup> Cf. Q. 3952-8.

<sup>4</sup> Q. 3967-8.

<sup>5</sup> Cf. evidence of Mr. James Crimion, J.P., Q. 4125, and Mr. Joseph Wilson, A. 4203.

A system of social insurance which has become the object of so much suspicion has already lost some of its utility. The original object of Workmen's Compensation was primarily to relieve the injured workmen, and only secondarily to exonerate the employer from heavy financial obligations, by enabling him to insure. It might have been expected that the Committee, having heard the overwhelming demand for drastic changes made by those speaking for the workmen, would have dealt at length in their findings with the complaints against the existing system. The Report, on the contrary, stressed the satisfaction of employers and insurance offices with things as they were, and made no attempt to reconcile the proved divergencies between the interests of the parties.

We may here recall the five points of evidence which 'satisfied' the Committee as to the undesirability of state insurance (see p. 140). The first three of these points were based upon the opinion of employers. The fourth point voiced doubts as to the capacity of the State to administer such a service. Only the last point gave expression to the opinions of labour representatives. But the story does not finish here. The Report, whilst admitting that the workmen's representatives were 'strongly in favour' of a state scheme, did not explain why they held this view. Hence our decision to give the reader a full summary of the relevant evidence.

The Committee merely declared that, while representatives of labour were in favour of state insurance, they did not wish to participate in contributory schemes and, with this assertion, they evaded the main point, i.e. the evils arising from the operation of the Act in regard to private insurance companies or mutual associations. The Committee did not close its eyes to the fact that evils were prevalent, but did everything to avoid the impression that such evils were inherent in a system of private insurance. Their object was to show that such evils could be remedied without trespassing upon the field of activities of private insurance. They were assisted in this attitude by the fact that those speaking for organized labour had—as stated in the Report—paid little attention to the system of operating Workmen's Compensation through compulsory mutual associations, as in Germany, thus avoiding direct government administration. Had the representatives of labour been able to give a full account of the practical working of such a system in Germany, or had any of our very numerous professors and lecturers on sociology or economics been able to give it to them, the issue might have been different. But the trade union representatives had not the information themselves, and no one could give it them, whilst the Committee apparently felt no desire to emulate its predecessor of 1904 by entering this field of comparative inquiry on its own initiative.

This omission is the more regrettable as there was at their disposal an illuminating report of a fully documented inquiry into the comparative advantages of the German and English system of Workmen's Compensation made on behalf of the National Associations of Manufacturers of the U.S.A.<sup>1</sup>

The authors pointed to the three fundamental characteristics of the German system:

Individual responsibility was eliminated and replaced by a system of collective responsibility of the industry.

- (2) The Mutual Indemnity Associations (*Berufsgenossenschaften*) were the keynote of the whole system, representing 'legally incorporated self-governing bodies which each and every employer was compelled by law to join', while the Associations had far-reaching powers for enforcing their rules, raising funds, &c.
- (3) Accident prevention, being of greater importance and larger social value than compensation, was placed in the hands of those employers' associations with the necessary legal authority for enforcement.

The only point of similarity between the German and the English system was that the latter, following the earlier German example, had recognized that the employer's fault need not be proven. But the Report fully explained the contrast of both systems:

A . . . comparison of the German and the English viewpoints shows the legislators of both countries to be alike in recognising the principle of trade risk. This Great Britain meets by extending personal liability to assure limited compensation for injury. Germany eliminates personal liability, substituting compulsory mutual insurance against accidents by its contributors. Germany unites attack upon the cause, with defence against the effect of injury; the British policy bears no relation to accident prevention. The German administrative principle aims at removing the element of personal antagonism between employers and employees in controversies arising from personal injuries; the British disregards it. The British Legislature intervenes to relieve dependency; the German to confer a right to assistance in return for contribution. By each, accident is regarded as wholly attributable to trade risk and the personal factor is eliminated.

The conclusion arrived at by the authors' study was fully in favour of

<sup>1</sup> Cf. *Accident Prevention and Relief. An Investigation of the subject in Europe with special attention to England and Germany*, by Ferd. C. Schwedtmann and James A. Emery, published for the National Association of Manufacturers (New York, 1911), p. 481. Compare in particular pp. 7-9, 10-11, 75, 224, 250-1, 255, and 261. As regards Germany, the authors had every assistance from official authorities, such as Dr. Kaufmann, the President of the *Reichsversicherungsamtes*, and Dr. Neisser, Chairman of the League of Mutual Indemnity Associations (*Berufsgenossenschaften*), and by such academic authorities on the matter as Professor Manes and many others.

the German system if compared with the Anglo-American one. They wrote:

The shortcomings of our present laws in antagonising harmonious relations between employers and workers are too well known to need lengthy explanation. Every employer of experience is aware that nine cases out of ten any kind of settlement with an injured workman under our present laws is unsatisfactory. It is more or less gamble. The relations of employers and employees often are transformed into personal dislike or even hatred, during damage suits, and this feeling leaves a lastingly bad influence, sometimes through a whole establishment. There is no gamble in the German system, and even in controversies which arise regarding compensation the individual employer's interest is not opposed to that of his impaired worker. In fact he is usually very much interested in seeing that his worker receives a fair deal at the hands of his employers' association.

The authors were particularly impressed by the far-reaching system of official statistics on Workmen's Compensation in Germany and pointed<sup>1</sup> to the obvious insufficiency and partly misleading character of comparable English statistics, a point to which we shall revert later. They tried to elucidate causes underlying the remarkable difference between English and German systems of Workmen's Compensation:

England regards the workman as one who must not be permitted to become a public charge. She concentrates on making some individual relieve distress which might require the aid of the State. She views the problem in terms of charitable intervention. How different is the German viewpoint. She thinks in terms of National policy as well as humanity. She tries to meet the causes as well as the effects of work accidents, and regards each impaired workman not only as a man, but as a National industrial asset, whose productive power, when impaired, is to be restored as well as compensated.

The authors conclude by asking themselves whether 'a measure of this nature be a proper model for imitation in our States', and emphasize that 'that of the German Empire, which first applied the principle of assured compensation, is among all the countries in Europe the most successful in its practical application'.

The Holman Gregory Committee, though they received statements relative to the German system,<sup>2</sup> attempted no critical comparison, and were content to include in their Report a few cursory remarks<sup>3</sup> which made no reference to this important investigation and its results.

The Committee in fact purposely avoided any serious comparison of both systems, and their practical effects on the injured workman's position.

<sup>1</sup> Cf. loc. cit., pp. 250-1.

<sup>2</sup> Cf. Mr. C. M. Knowles's evidence, Q. 933-1190, 1575-1667, and 8036-8073, *passim*.

<sup>3</sup> Cf. pp. 9-10.

## CHAPTER VIII

### THE HOLMAN GREGORY REPORT ANALYSED

#### 2. THE SYSTEM: PROPOSED REFORMS

Men have concerned themselves very largely with perfecting the machinery, the instruments, the material implements, which the worker employs in his mechanical arts. But they have hardly ever concerned themselves with perfecting the worker himself. Yet even if he should not be regarded as an instrument, a tool, a source of motive power, he ought to be placed in the front rank of all instruments and all mechanical agents because he possesses the inestimable advantage of being an instrument which watches and corrects itself, a motor which starts and stops itself, at the bidding of its own intelligence, and which perfects itself by plans of thought no less than by means of labour.

BARON CHARLES DUPIN (1784-1873).

**I**N contrast to their negative attitude in other matters of principle involved in Workmen's Compensation legislation, the Holman Gregory Committee proposed to introduce compulsory insurance, a drastic proposal involving, at first sight, a fundamental change of the system.

The Committee did not so regard it. The proposal is not to be found in the Report under the heading of 'State Insurance', but is dealt with later, where the 'Existing System' is discussed as a sub-section entitled 'Self-Insurance'. This arrangement is not without significance. The Committee apparently wished to emphasize that compulsory insurance did not necessarily entail state insurance, viz. administration by the State, and desired to draw a clear distinction between the two. The reason is not far to seek: in proposing compulsory insurance, the Committee were anxious not to appear as advocates of a revolutionary change in the system. They favoured compulsory insurance within a system of private insurance. Such a system was not impossible. The question at issue was one of expediency, though it seems questionable to many persons to-day whether the State should compel people to resort to private institutions without guaranteeing, at the same time, the financial stability and fair treatment of insured persons.

Disagreeing with the Holman Gregory Committee, we cannot consider compulsory insurance apart from the problem of State insurance. Though they chose another system, the pioneers of Workmen's Compensation in England had viewed without disfavour or alarm the introduction of a state system which would have meant compulsory insurance for all. Twenty years later the demand for compulsory insurance was strongly pressed before the Holman Gregory Committee, although with exceptions. 'Large employers, who, at present,

carry their own risk and who, in the past, have met their obligations under the Act, could be exempted from the requirements of any compulsory scheme without detailed investigation into their financial position.' The Committee apparently thought that, as the majority of the employers had insured under the Act, compulsory insurance could be applied only to those employers who did not insure. The fact that non- or self-insurers had existed in great numbers for the last forty years, the Act of 1906 notwithstanding, at the cost of great suffering and injustice, should not have been regarded as merely an incidental and remediable deficiency of existing legislation, but as a fundamental defect of the system. If state insurance, embracing all workmen coming under the Acts, had been introduced at the outset, such cases would have been avoided. As the proposals of the Committee on the subject of compulsory insurance, made in 1923, still (1938) await acceptance by the press, the public, parliament, and the government, it may well be argued that the difficulties of applying this principle without simultaneous state insurance are inherent to the system of Workmen's Compensation in England.

The position of uninsured, mostly small, employers was fully considered by the Committee and explained in their Report. It is evident that, in the case of so-called 'self-insurers', the danger to the injured workman of losing his compensation owing to inability of an employer to meet his obligations is very real. Exact statistical information on the point was not available. The Committee, however, tried to get a fair estimate.<sup>1</sup> The Home Office possesses statistical information as to the number of uninsured employers in seven groups of industry from which returns were received under Section 12 of the Act of 1906, which prescribes returns in respect of compensation paid. As stated in the Report, the 'uninsured' employers in the seven industries (Shipping, Factories, Docks, Mines, Quarries, Constructional Work, excluding Building, and Railways) included those who were not, as regards any part of their liability, insured either in one of the companies or in mutual indemnity societies which sent returns to the Home Office.

Collective returns were made by all insurance companies, and all but a few mutual indemnity associations, whose members were left to make their own returns. There is nothing to distinguish these employers from those actually uninsured, with whom they were consequently included, although the numbers involved were, according to the Report, small. The total number of returns received from uninsured employers was, in 1914, 24,961. The number of returns received from uninsured employers who had made no payments for compensation during the year 1914 was 22,293. The Committee

<sup>1</sup> Cf. *Report*, pp. 16-17.

further stated that there were no figures showing the number of uninsured employers outside the seven industries, but that, if the other industries included roughly the same proportion of uninsured employers (which seemed highly probable, as these industries include agriculture, building, and domestic service), it would appear, having regard to the census figures, that the total number of uninsured employers within the Act could not be less than 250,000.<sup>1</sup> The fact that, of 24,961 returns received from uninsured employers, 20,795 related to 'factories' endows this figure with added significance.

The Committee, which dealt conscientiously with this question, emphasized the difficulty of getting evidence in regard to unpaid compensation; it was mostly the 'small employer' who was likely to be in default, and many cases never became known. But it might have borne in mind that the uncertainty engendered in the minds of great numbers of men as to whether, in the event of an accident, they or their relations will receive their due under the Act, is itself a great evil.

The number of persons thus deprived of compensation may be small, but the workmen employed by 250,000 employers, numbering with their dependants perhaps two millions, are all liable to such treatment, and a yet larger number imagine that they may one day find themselves in that position. Cases occasionally occur where a sum smaller than the full amount due is accepted by the workman, under a threat of bankruptcy if the full amount is demanded, or where claims are not pressed because the employer is not worth fighting. Such cases were common in connexion with motor accidents, but the question has become one of pure law since third-party risk insurance became compulsory, and turns nowadays almost entirely on the terms of the policy between the assured and the insurance company. The absence of statistics does not diminish the hardships suffered or make the position less serious. Striking evidence of the hardships suffered by men whose employers could not carry their own risk was given by Judge Ruegg, speaking 'on this point' for all county court judges, who<sup>2</sup>

have nearly all had very hard cases of men who have failed to get their compensation in consequence of the inability of the employer to pay.

I have had three cases myself. . . . Two of them, window cleaners . . . . In each case they employed a man to assist them. . . . In each case the man was killed and left a widow and family. . . . One of these men is continuously up before me on judgement summons to pay 10s. on account, or £1 on account, and he

<sup>1</sup> Owing to the War figures later than 1914 were not available. For figures for 1910 see Chapter VI, p. 126. No later estimate has been made, see *Debates, H.C.*, Apr. 7, col. 511, and *Report*, p. 17.

<sup>2</sup> A. 10183.

has paid a few pounds, but he will never pay the £250. In the other case, I do not think any attempt was ever made to pay. . . . The third case was that of a very small tradesman who had really nothing. One of his men was killed. He was uninsured; and in that case they asked me to sanction a settlement for . . . £30 to £40, an absolutely inadequate sum. It was put to me that if I would sanction that settlement his friends would come forward and find the money, but they would not find any more, and after going into it very carefully I was satisfied that that was so, and I had to sanction (whether I had power to do so or not, I do not know) the settlement in that case in order to get what one could for the widow, which was a sum of £30 or £40. In these three cases there was very great hardship, as resulting from the same cause, of course, that the man was uninsured and had no capital. Therefore I think, it ought to be a criminal offence, an offence punishable by fine, at all events, not to insure, except in the case of great firms or railways, who might get a certificate from the Home Office that they are perfectly solvent and able to bear their losses themselves.<sup>1</sup>

There was further evidence to the same effect, but witnesses, appearing both for employers and for the great trade unions, appeared to regard the loss of compensation through non-insurance and bankruptcy of the employer as so exceptional as to be of little importance.<sup>2</sup> Such cases were, of course, beyond their experience, and the witnesses had not, like Judge Ruegg, been brought into contact with the poignant reality of individual cases. The Committee, whilst omitting from its Report any reference to the testimony on this subject of those who appeared before them, declared themselves satisfied that

cases arise where hardship occurs by the loss of compensation through the employer's failure to insure, and we have been impressed by the strong feeling which exists among work people, that means should be found by which such hard cases should be prevented. We feel bound to take notice of that sense of grievance.

The Committee hinted that any increase in the statutory obligations of employers would increase disproportionately the liability of the employer with small capital, and thereby enhance the danger of unpaid claims for compensation. The State, they reported, would fail in its duty if it imposed increased obligations on the employer without taking steps to ensure that benefits provided for the workman should not become illusory. The logical solution of the difficulty seemed to them to be a system of compulsory insurance, as advocated by many witnesses, which was brought nearer when, in 1906,

the principle of the 1897 Act which, speaking generally, confined liabilities to the

<sup>1</sup> A. 10183.

<sup>2</sup> Cf. Index to Holman Gregory *Report* under Compensation, Loss through Bankruptcy, Loss through Poverty and Non-Membership, Loss through Non-Insurance of Employer, p. 461.

large employer, was abandoned. The increased burden which it is now necessary to impose makes compulsory insurance more pressing still.

The Committee also drew attention to Mr. Joseph Chamberlain's cautious adumbration of a universal scheme of insurance, which necessarily involved statutory compulsion, and to Mr. Herbert Gladstone's declaration, when introducing the Workmen's Compensation Bill in 1906, that '... the ultimate solution of the whole question is probably to be found in a scheme of compulsory insurance'.<sup>1</sup> The Committee concluded that

the foregoing arguments, taken together, make out a strong case for requiring the employer—especially the small employer—to cover his workmen's compensation risk by insurance;

and expressed their conviction that

it is necessary for the protection of workmen, and not contrary to the interests of the employers themselves, that those who are unable safely to carry the risk should be compelled to insure.

The Committee, however, could not bring themselves to proclaim that a fundamental change of the system of Workmen's Compensation in England was a necessary consequence of their conclusions. Most of the Committee were men wedded by their respective occupations and training to the existing system. The official members, when not sitting upon this Committee (from May 1919 to May 1920), were grappling daily with the difficult aftermath of the War, and it should perhaps not surprise us that they sought to avoid radical changes at such a time. The Committee introduced their recommendations with the words 'The present system to continue', and described as a 'modification'<sup>2</sup> their proposals for compulsory insurance, holding that as most employers, and all those employing large numbers, were insured, this 'modification' would merely touch the minority of the small and weaker employers and did not, therefore, involve a change in the system. The objection that no employer should be compelled to insure with an insurance company that is admittedly making profit out of the business could not be ignored; in mentioning this objection the Committee revealed the weakness of their proposal, which was rejected by the government of the day as impracticable.

The Committee suggested two other 'modifications' of the 'present system'. The first related to insurance companies. Here again it was

<sup>1</sup> Cf. *Debates, H.C.*, vol. 154, cols. 888-9.

<sup>2</sup> 'Every employer, other than the Crown, a local or other public authority, a statutory company, or a householder in respect of servants not employed by him for the purpose of his trade or business, to be required to insure against workmen's compensation risk', cf. *Report*, p. 70.

affirmed<sup>1</sup> that the Committee found that 'employers are satisfied with the way Insurance Companies have dealt with claims and that the payment of benefits by the Insurance Companies has, generally speaking, been prompt, and satisfactory to the workmen'. We have already criticized this conclusion in detail. We are satisfied that it was unjustified and unsupported by the evidence.

The Committee called attention to the safeguards applied by the Assurance Companies Act, 1909,<sup>2</sup> which might in their view be usefully strengthened, and proceeded to draw attention to a problem of even greater importance—for the business transacted by insurance companies was by now largely in the hands of big composite offices, whose financial stability was not questioned—viz. expense ratio of private insurance business and its effect upon premiums. They had been told by various insurance witnesses that for many years before 1912 they conducted this business at a loss and had been obliged to raise rates.<sup>3</sup> This period of losses had apparently succeeded the era of excessively high rates which followed the introduction of Workmen's Compensation in 1897 (see p. 129). The new business attracted competitors and, according to the evidence of Mr. W. E. Gray, General Manager of the Employers' Liability Assurance Corporation, rates remained at relatively low levels until 1912, when the business was placed upon a new and sounder, because profitable, footing.<sup>4</sup>

Employers' Liability business was, at this time, conducted by

- (1) The 'Tariff' companies, consisting of forty-eight leading offices, members of the Accidents Office Association formed in 1906 in connexion with the new Act;
- (2) Seventeen 'Non-Tariff' companies, transacting workmen's compensation business as non-members of the Association, not on the basis of an agreed tariff, but in active competition with members of the Association.

Profits had been high in spite of competition as<sup>5</sup>

Both premiums and benefits are based upon wages, with the important difference that whereas the premiums are normally proportionate to the wage-roll, the benefits are subject to limits which prevent the liability rising beyond a certain level whatever the rate of wages may become. The effect of the general rise in wages in recent years has been to increase the total of the premiums paid by employers, without any corresponding increase of liability for benefits, whereby the profits of the companies have grown in a way that was not anticipated.

It is frequently contended that official administration of insurance of this kind would be unduly rigid. Here was a case where the

<sup>1</sup> Cf. *Report*, p. 12.

<sup>2</sup> Cf. *Report*, p. 14.

<sup>3</sup> Cf. p. 14.

<sup>2</sup> Cf. our own remarks on this matter, p. 90.

<sup>4</sup> Cf. *Minutes of Evidence*, vol. ii, p. 189.

formula of contribution and benefit was not objected to as being too 'rigid', when it led to higher profits, even in war-time and at a moment when the national interest required the utmost economy in administration. The benefits paid to the injured workman were utterly disproportionate to the costs involved, as the following official figures show:

|  | 1911          | 1918             | 8 years<br>average |
|--|---------------|------------------|--------------------|
|  | Per cent.     | Per cent.        | Per cent.          |
| Commission . . . . .                                   | 13.0          | 10.4             | 12.1               |
| Expenses of management . . . .                         | 19.5          | 19.0             | 19.0               |
| Payments under policies and transfers to reserves, &c. | 67.9          | 47.3             | 51.7               |
| Profit and loss . . . .                                | 1.4<br>(loss) | 20.1<br>(profit) | 15.2<br>(profit)   |
| Transfers to additional reserves . .                   | 1.0           | 2.2              | 2.0                |
|  | 100.0         | 100.0            | 100.0              |

On the average of eight years, of each incoming £1 not more than 10s. 4d. was spent in payments under policies and transfers to reserves for outstanding claims and unexpired risks. 2s. 5d. went in commission, 3s. 10d. in expenses of management, 3s. was disbursed as profit, and 5d. was devoted to transfers to additional reserves. The Committee observed that

Whatever the circumstances in which the business was transacted, the fact remains that during the last 5-6 years the employers had to pay £100 in premiums for every £48 paid out in benefits to the injured workmen. In our view this is wasteful and unsatisfactory.

The Committee concluded that expenses, commission, and profits should not exceed 30 per cent. of the premium income, leaving 70 per cent. of the premium income available for disbursement to workmen or the dependants under the statute. They then met representatives of the Accident Offices Association with a view to a working arrangement and, after extended negotiations, agreed upon the heads of a working arrangement.<sup>1</sup> The non-tariff companies were also consulted and agreed to what the Committee believed to be 'a more economical arrangement than is to be found in the working of insurance companies in any other country'.

The Committee might have added that the ratio of management expenses to premiums was much lower where companies had no part in the matter. A few years after the publication of the Report,

management expenses, commission, and profit was 25-40 per cent. of the premium income of U.S. insurance companies doing compensation business, but as low as 6.2 per cent. in the New York Competitive State Fund (i.e. where the state funds compete with those of private insurance companies), and only 1.625 per cent. in the case of the Ohio State Fund which was exclusive and non-competitive. The average expense ratio of stock companies, as computed by the U.S. Bureau of Labour in 1923 from the figures of twenty-one states and two Canadian provinces,<sup>1</sup> was:

|                         | <i>Per cent.</i> |
|-------------------------|------------------|
| For Stock Companies     | 37.5             |
| Mutual Companies        | 20.0             |
| Competitive State Funds | 12.5             |
| Exclusive State Funds   | 5.75             |

The Holman Gregory Committee might have well considered and discussed such figures as these in relation to the agreement reached with the offices, but their outlook was confined, apparently of set purpose, to the British Isles. The reason for this, once again, must be sought in the circumstances in which the Committee was appointed and the events of the period. Every member of the Committee was simultaneously working overtime at other urgent business. Every witness that appeared before them was preoccupied. Even the Secretary had, in addition, his own routine work at the Home Office to perform. In the circumstances, the agreement reached must be regarded as a praiseworthy achievement, for which the Home Office deserves full credit.

The first undertaking in the matter, given by the Accident Offices in May 1923, may be briefly summarized as follows:

The Accident Offices Association engaged on behalf of its constituent members to adjust from time to time the rates of premium in connexion with workmen's compensation insurance in such way as to make the 'loss ratio', i.e. the proportion which the total amount paid or set aside in respect of claims bears to the premiums, not less than a fixed percentage. The 'loss ratio' for 1924, 1925, and 1926 was fixed at 60 per cent., for subsequent years at 62½ per cent. or such other proportion, not less than 60 per cent., as may be agreed between the Secretary of State and the Accidents Association.

The agreement is a good example of what a government department can achieve when it sets out, even with little public or parliamentary support, to compel private competitive business to make economies in the public interest. For the ten preceding years an expense ratio of almost 50 per cent. had been regarded with complacency as normal

<sup>1</sup> Cf. Joseph L. Cohen, *Social Insurance Unified*, 1924, p. 95.

and proper. It was reduced, almost overnight, by one-fifth. Had the insurance offices been tackled on these lines at an earlier stage, the sum annually saved to employers or available, alternatively, for more generous dividends or bonuses to shareholders, would have been nearly £1 million a year. It would be unreasonable to expect more generous settlements of compensation cases as a consequence. Changes come slowly; *eppur si muove*. The Committee had proposed that 'at least 70 per cent. of the premium income' should be devoted to benefits to injured workmen or their dependants, the remaining 30 per cent. being available for the management expenses or profits of the companies, and the payment of commission to agents; the latter not to exceed 5 per cent. of the premium income in any case. Had this been achieved employers would have been saved from £1,250,000 to £1,500,000 a year. We shall consider later what increase of the percentage to be spent in benefits could be proposed to-day. The insurance companies showed a premium income in 1935 of £5,305,843, of which 64·34 per cent. was expended in payment of compensation,<sup>1</sup> but this included about 5 per cent. for legal and medical expenses incurred by the offices, but not by the injured workmen, as a general rule, in connexion with the settlement of claims, a matter which is dealt with below. These bald figures must, however, be accepted with reserve.

Apart from compulsory insurance the Committee proposed two important 'modifications' of the system, relating respectively to companies and to mutual associations. It strongly recommended that mutual associations be placed under the same obligations as insurance companies as to furnishing returns and information and as to the provision of reserves against outstanding liabilities, and, further, that mutual associations collecting premiums from their members on the same lines as companies (viz. on the understanding that no further liability attached to their members) should be required, equally with companies, to provide reserves against unexpired risks.<sup>2</sup> The Assurance Companies Act of 1909 had not been made applicable to mutual associations.<sup>3</sup> Had it been anticipated at the time of the passing of the Act of 1906 that mutual associations would so increase, the exemption might not have been conceded.<sup>4</sup> The view apparently taken in 1909 was that, since an employer was not obliged to insure against workmen's compensation risk, it was reasonable to exempt those who

<sup>1</sup> Cf. *Workmen's Comp. Statistics for 1935*, Cmd. 1937, p. 7.

<sup>2</sup> Cf. p. 21.

<sup>3</sup> Cf. Section 33 (1) (a).

<sup>4</sup> Cf. evidence of Mr. W. J. Smith representing the Board of Trade, A. 11810 and *passim*.

formed voluntary associations for themselves, even though such mutual institutions, lacking financial stability, might prove an illusory protection to employers and their servants. No case of default by a mutual association was brought to the notice of the Committee, which, however, held that whatever degree of control might be imposed upon insurance companies trading for profit should be applied to mutual associations except that, in their case, the deposit of £20,000 required from the insurance companies should be dispensed with, as this provision was designed not to create a reserve fund, but to prevent the promotion of companies without substantial financial backing.

Neither these proposals nor those of the Clauson Committee regarding mutual associations have yet been acted on, but the suggestions of both Committees were quoted in the Report on Compulsory Insurance of 1937 and embodied therein so far as they applied to mutual indemnity associations transacting compulsory insurance business (i.e. in coal-mining). Moreover, the Report on Compulsory Insurance made it clear that, once these conditions were imposed upon associations transacting compulsory insurance business, they would probably have to be extended to all mutual indemnity associations.<sup>1</sup> The same Report noted that neither the Board of Trade nor the Home Office was satisfied with the present system, and regretted that mutual associations, which did most of the employers' liability business in coal-mining, were 'not subject to the requirements applicable to other insurers',<sup>2</sup> as they would have been long ago had the recommendations of the Holman Gregory Committee been accepted by the government of the day. While studiously avoiding any deviation from the existing system of private insurance, the Committee realized that the proposed 'modifications' would necessitate additional administrative safeguards.

To ensure the application of these, the Committee proposed the appointment of a Commissioner to supervise the operation and application of the Workmen's Compensation Acts.<sup>3</sup> He was to supervise the companies, the mutual associations and the self-insurers, with power to license (with annual renewal) any firm or body wishing to conduct workmen's compensation business. His duties were to include the

- (a) Appointment and regulation of medical referees.
- (b) Scheduling of new industrial diseases.
- (c) Collection of returns from employers.
- (d) Regulation of the duties of the Certifying and other appointed Surgeons in cases of industrial disease.
- (e) Making of orders conferring supplementary powers on Committees repre-

<sup>1</sup> Cf. *Report of the Committee on Compulsory Insurance*, 1937, pp. 44-5.

<sup>2</sup> Cf. *ibid.*, p. 7.

<sup>3</sup> Cf. *Report*, p. 22, and Part XIV, pp. 8-9.

sentative of employers and workmen which have power to settle disputes under the Act.

- (f) Making of Schemes under the Workmen's Compensation (Silicosis) Act, 1918, and
- (g) Making and giving effect to arrangements under the Disabled Men (Facilities of Employment) Act of 1919.

The Commissioner was to supervise the work of the county court registrars, the development of schemes of medical and surgical treatment, for which detailed suggestions had been made, investigations of the question of training disabled men, with wide powers to obtain statistical information. He was to make, through the Home Office, an annual Report to Parliament, summarizing the development of workmen's compensation during the year in other countries, and suggesting amendments to existing Acts of Parliament. The cost, estimated at £30,000 a year, was to be met by a levy upon all insurers, on the basis of wage-rolls—a weak point, for the sum was so insignificant, compared with the premium income of some £12 millions a year, that it would have been better provided from general revenues. This important proposal was not accepted by the government of the day.<sup>1</sup>

The Committee concluded their Report with some observations as to 'Accident Prevention' which might well have been included in that part of the Report which dealt with 'The System of Insurance'. This divorce was doubtless intentional. The Committee, having decided that the present system was to continue, could not consistently record in this connexion severe criticism in any description of 'the system'. Administrative dichotomy characterizes all English employers' liability and workmen's compensation legislation, a fundamental dualism between accident prevention, administered through factory inspection, and compensation granted by statutory regulations. The Holman Gregory Committee were doubtless aware, but did not mention, that this 'system' finds no counterpart in other great industrial countries: e.g. Germany and the U.S.A. In Germany accident prevention is a duty of mutual indemnity associations. In the U.S.A. it is indirectly supported by a system of 'Merit Rating', involving the principle that the employer who takes all reasonable steps to safeguard his employees should pay less for accident insurance than the employer who is indifferent to such matters, this system being again either one of 'experience rating' or 'schedule rating'.

<sup>1</sup> This decision was doubtless greatly influenced by the dissenting Memorandum of Sir Alfred Watson and Mr. W. R. L. Trickett in this matter, who both argued against the creation of a Commissioner, holding that if the rates of insurance were to be fixed as suggested by the working agreement, no effective parliamentary control was possible. This, in their view, was a strong argument against the creation of a Commissioner.

The Committee had to confess that 'the Workmen's Compensation Acts of our own country have hitherto included no provision to encourage prevention'. This might have been included as a legitimate criticism of the 'system', but it was relegated to a remote chapter at the end of a long recital of disconnected topics, with a vague recommendation for the introduction of schedule rating through the proposed Commissioner by agreement with the insurance companies and mutual associations—a system which, whatever its merits, cannot be regarded as a hopeful contribution towards a solution of the problem. In a recent American publication on the matter we read: 'Safety becomes tangible to business men only when it is reduced to financial terms.'<sup>1</sup> Whether or not this dictum is applicable to England to-day—and we should be prepared to dispute it—it must be remembered that, in the words of a witness, 'to the employer it is a matter of money: to the workman it may be a matter of life and death'.<sup>2</sup>

Had the Holman Gregory Committee studied the American investigation dealing with the German and the English systems of Workmen's Compensation (see Chap. VII), it would have been apparent that accident prevention and Workmen's Compensation might well be common parts of a single system and that, under such a system, the interests of employers and employees might be identical. But here again the fear of any change in the 'system', however necessary, stood in the way.

<sup>1</sup> Cf. G. F. Michelbacher, *Casualty Insurance Principles*, New York, 1930, p. 239.

<sup>2</sup> Evidence of the Rt. Hon. T. D. O'Shaughnessy, P.C. (Ireland), K.C., A. 23453.

## CHAPTER IX

### THE HOLMAN GREGORY REPORT ANALYSED

#### 3. ECONOMIC AND SOCIAL DEFECTS OF WORKMEN'S COMPENSATION

##### A. *Scope and Benefits*

... the ordinances for relief and the ordinances for labour must go together; otherwise distress caused by misfortune will always be confounded, as it is now, with distress caused by idleness, unthrift and fraud. It is only when the State watches and guides the middle life of men, that it can, without disgrace to them, protect their old age, acknowledging in that protection that they have done their duty, or at least some portion of duty, in better days. I know well how strange, fanciful or impracticable these suggestions will appear to most of the business men of this day; men who conceive the proper state of the world to be simply that of a vast and disorganized mob, scrambling each for what he can get, trampling down its children and old men in the mire, and doing what work it finds must be done with any irregular squad of labourers it can bribe or inveigle together, and afterwards scatter to starvation. A great deal may, indeed, be done in this way by a nation strong elbowed and strong hearted as we are—not easily frightened by pushing, nor discouraged by falls. But it is still not the right way of doing things, for people who call themselves Christians.

JOHN RUSKIN, 1868.

SIR HOLMAN GREGORY and his colleagues, despite an apparent desire to maintain the existing system of Workmen's Compensation, did not close their eyes to its imperfections, or to the many ways in which it worked to the disadvantage of the injured men, but devoted themselves to the task of disclosing its more glaring deficiencies, and to proposing reforms within the framework of the existing system and in harmony with its fundamental principles. Subject to these limitations the Committee did its work impartially and well. We deal elsewhere with its proposals, not all of which were accepted by the government or embodied in subsequent legislation. At this stage of our inquiry our main purpose will be to describe the further development of, and reasons for, the principal reforms suggested by the Committee. In this respect several separate problems have to be distinguished, beginning with the range within which workmen's compensation is actually payable. This in turn involves two separate categories of facts:

- (1) What injuries fall within the scope of legislation, and
- (2) What persons are entitled to receive compensation, not in consequence of the nature of the injury but in respect of their status as workmen, and of the nature of, and the remuneration received for, their employment.

In order to sustain a claim under the Act of 1906 for personal injury, it was necessary to show that the injury sustained was a result of

- (a) An 'accident arising out of and in the course of employment', or
- (b) One of the industrial diseases covered by the Act.

The term 'arising out of and in the course of employment' has been a source of much dispute and many judicial interpretations; the words were the foundation of the Act of 1897 and have not been altered by subsequent legislation. The term, which led to many injustices, was much resented by representatives of labour. A workman who went to the assistance of another in an emergency might, if injured, be beyond the scope of the Act, as it might be held that the injuries did not arise 'out of and in the course of his employment'.<sup>1</sup> Another example<sup>2</sup> was given by Mr. Frank Hall, representing the Miners' Federation of Great Britain:

if a youth was put on to drive an engine, and for some reason went away when it was stopped, and one of the bankmen went and started it, which he would in ninety-nine cases out of a hundred, compensation can be refused if he meets with an accident in returning to his work.

Another witness<sup>3</sup> noted that the House of Lords had taken a broader view of the principles of the Act than any of the lower courts, though county court judges had been more favourable to the workmen than the appeal courts. He would have been prepared to advocate that the decisions of county court judges should be final, but for the fact that all were not equally fair-minded.

What was the opinion of county court judges? Judge Ruegg favoured retention of the words, stating<sup>4</sup> that county court judges, having considered the words collectively, preferred in general ('although there was a little difference of opinion') that they should be retained rather than that any fresh form of words should be substituted, lest litigation should 'begin . . . all over again'. He regarded such cases as those just mentioned as deplorable if, perhaps, 'very extraordinary', but, in reply to Mr. Bannatyne, agreed that 'there are a large number of cases of accident which are excluded on the ground that the workman is not doing work for his employer's benefit and had not his authority, but was doing it for his own private purposes', and emphasized that 'a very considerable number of them are extremely hard cases'.

Some of his colleagues held the opinion that the words 'arising out of' should be deleted. 'Some of them', he explained, 'thought that that

<sup>1</sup> Cf. Mr. John Baker, Midlands Miners' Federation, A. 2096.

<sup>2</sup> A. 2299.

<sup>3</sup> Cf. Mr. J. Henson, Natl. Sailors' and Firemen's Union.

<sup>4</sup> Cf. Q. 1091 sqq. and 10357-9.

would be more satisfactory, because it would then embrace every accident that occurred during the time that the relationship of master and servant could be said to be subsisting, and all these extremely nice questions, which have troubled all the courts, as to whether a particular accident arose out of a risk incidental to the employment would be eliminated.<sup>1</sup> He wished he could meet cases such as that of the 'engine-man' and suggested<sup>2</sup> as a formula which might cover them:

That the workman is protected against accidents from the time he enters on the employer's premises to the time he leaves the employer's premises and when working elsewhere on the employer's business.

Labour witnesses strongly urged the deletion of the words 'arising out of' and 'in the course of' his employment. Mr. Frank Hall<sup>3</sup> and Mr. John Baker supported their contention by quoting single cases of apparent injustice and hardship to an injured workman who might have been 'doing his level best in the interests of his employer and all concerned'. Witnesses speaking for the Accidents Office Association were also in favour of deleting the words.<sup>4</sup> The Committee, however, decided in favour of retaining the words, pointing to the fact that, if a workman is doing work that he is employed to do in an improper way, he is not, in case of serious injury, ineligible for compensation, but, if he meets with an accident whilst doing some act which he was not employed to do, he cannot recover compensation. The question to be decided is: 'Was it part of the injured workman's employment to hazard, to suffer, or to do that which caused his injury? If "yea", the accident arose out of his employment. If "nay" it did not. . . . In our opinion no change is desirable in this respect.' The Committee thus paid scant attention to the cases reported by witnesses of hardships arising from varying interpretations of the words 'arising out of'. It was apparently satisfied that the courts had taken 'on the whole a liberal view in the matter',<sup>5</sup> and, ignoring cumulatively frequent cases of hardship, recommended no enlargement of the scope of the Acts.

They adopted, however, a different attitude when considering not the particular circumstances but the nature of an injury itself. The law as it stood applied to cases of disease which could be shown to have been due to a particular occurrence at a particular time. The Act of

<sup>1</sup> A. 10195.

<sup>2</sup> Cf. A. 10203.

<sup>3</sup> Cf. A. 2241; for a particular case cf. A. 2160. Cf. also A. 2096.

<sup>4</sup> Cf. Q. 18155-9 and evidence of Mr. W. E. Gray and Arthur Worley, C.B.E., *passim*.

<sup>5</sup> The Committee quoted the case of a cashier who was murdered on the railway while carrying a bag of money belonging to his firm and that compensation was awarded—a case according to Shakespeare's view (see p. 101) so clear that it should not have been recorded as an example of broad-mindedness.

1906 also applied, with some modifications (see section 8), to cases of death and incapacity caused by any industrial disease or injury specified in the Third Schedule of the Act or added thereto by Order. The list had been greatly enlarged since the passing of the Act and included some thirty diseases, as compared with the six mentioned in the original Act, now extending not only to anthrax, lead poisoning, and miners' nystagmus, but to rare afflictions such as compressed-air illness and poisoning by nickel carbonyl.<sup>1</sup> Special legislation had dealt with fibroid phthisis or silicosis, caused by the inhalation of certain kinds of siliceous dust.<sup>2</sup> A scheme had also been made for the Refractories Industries (mining and quarrying ganister rock<sup>3</sup> and the making of ganister or silica bricks). Legislation in the matter had come very tardily, for Ramazzini had long ago discovered, and described, the fearful consequences of all dust diseases. The Departmental Committee of 1906<sup>4</sup> had considered the matter very clearly and recognized silicosis as 'a specific and sufficiently distinguishable trade disease'. The Committee felt unable to recommend that it should be scheduled, as

- (1) Owing to the slow development of the disease, great difficulty would be experienced in the case of the workmen who had changed their employment; and
- (2) Employers might be tempted to avoid possible liability by discharging any workman showing symptoms of respiratory weakness.

The scheme for Refractories Industries surmounted these difficulties by establishing a general Compensation Fund (administered by a mutual association of employers), to take over liabilities and rights of the contributing employers, to which all employers in the industries affected must contribute.

In determining whether or not a particular disease or injury should be scheduled under the Act, it had always been regarded as essentials<sup>5</sup>

<sup>1</sup> Cf. *Report*, p. 24.

<sup>2</sup> Under the Workmen's Compensation (Silicosis) Act, 1918, power is given to the Home Office to make schemes on special lines to provide for the payment of compensation in the case of any workman engaged in any specific industry or process, who is certified to have been killed or disabled by silicosis or to be so affected by the disease as to make it dangerous for him to continue in the employment.

<sup>3</sup> A close-grained siliceous stone from the lower coal measures in Yorkshire, ground down to form furnace-hearts, &c. Also known as 'crowstone'.

<sup>4</sup> Cf. *Report of the Committee on Compensation for Industrial Diseases*, May 1907; also that of October 1908 (Cd. 4386).

<sup>5</sup> A lengthy statement in this respect is to be found in the *Report of the Departmental Committee on Compensation for Industrial Diseases* of May 1907, p. 2; here the difficulty is explained to distinguish between cases of a trade disease and such cases where the same kind of malady might have been contracted quite apart from the sufferer's employment. Bronchitis was particularly quoted.

that the disease or injury should be so specific to the employment that its causation thereby could be established in individual cases.<sup>1</sup> Justified as this attitude might appear as a matter of legal practice,<sup>2</sup> it inevitably involves hardship and a sense of injustice in many cases. Mr. Daly, representing the Dublin United Trades Council and Labour League, emphasized the necessity of a more general conception of diseases:

A. 9598. We are of the opinion that where a worker contracts a disease through his employment he is entitled to come in under the Workmen's Compensation Act.

Q. 9600. You mean if a person catches a cold at his work and that leads to phthisis he ought to be compensated. Is that what is in your mind?

A. Precisely. It is not in my mind alone, it is in the mind of the whole movement.

Q. 9743. With regard to industrial diseases, you said that phthisis, cold or rheumatism should be considered an injury arising out of the employment. Would it not be very difficult to show that it was really due to the employment, because they are so common in every-day life, apart from employment?

A. That might be so, but the men who are engaged in these trades believe they can be proved, and there would not be as much difficulty as what strikes me at the moment.

Q. 9745. You are really going a long way now, are you not?

A. Take the case of a printer or compositor who develops phthisis because of the nature of his employment. That is not an industrial disease in the schedule.

Q. 9746. I agree with you that an injury arising out of the employment by sickness or accident should come under the Act, but it is a difficult thing to prove?

A. Yes.

An important issue, as yet unsolved, was making its first appearance. Mr. Chorlton, speaking for the National Union of Railwaymen, claimed<sup>3</sup> that

All diseases attributable to and which can be traced to a workman's ordinary occupation, should be included into the Act for compensation.

The view of employers and solicitors was that it would be impossible to distinguish the one cause from the other,<sup>4</sup> and catarrhal

<sup>1</sup> Cf. *Holman Gregory Report*, p. 25.

<sup>2</sup> Cf. *Industrial Diseases Report* of May 1907: 'To ask a court of law to decide would be to lay upon it an impossible task.'

<sup>3</sup> Cf. A. 2860.

<sup>4</sup> Cf. evidence of Mr. H. K. Beale, a solicitor, A. 8949: 'Take a typical instance. An old driver, say over 60, catches a cold, which, sooner or later, goes wrong, develops into complications, and the man finds that he is unable to return to work or possibly dies. It would not be difficult for the man or his relatives to produce opinions that he must have contracted the cold at work. No one, however, can say how colds originate, and the company would be at a hopeless disadvantage by only getting into such a case at a date when it is impossible for their doctor to say what caused the original illness.'

infection was cited in support of this contention. It is, however, open to a worker infected by catarrh which leads to pneumonia and loss of earning power, owing to a breach of the provisions of the Factory Acts relating to the heat of workrooms, to bring an action for injuries sustained by the breach of a statutory regulation. Dame Adelaide Mary Anderson, formerly Principal Lady Inspector of Factories, noted that 'nearly all the workers suffer from colds', and that 'the discomfort of low temperatures was intensified in some occupations, such as aerated waterworks, where floors, usually of concrete or stone, are liable to be very wet and bottles and siphons alike cold to handle'.<sup>1</sup> The problem, of which the foregoing is an extreme aspect, is of course closely bound up with the relation which should exist between the National Health Insurance System and Workmen's Compensation Acts and with the general question of national health. All forms of catarrh are far more prevalent in England than in any foreign country, and the national health has not been improved by the fashionable practice of indiscriminately removing tonsils and adenoids as a matter of routine, at last, after some twenty years, condemned by the Medical Research Council.<sup>2</sup>

The Committee did not touch on such aspects, nor did it quote the evidence of Professor Edgar L. Collis, M.D., Professor of Preventive Medicine of the University College of South Wales, who held that great injustices might accrue to a workman suffering from a disease which might have been contracted outside his employment but was equally likely to have been caused thereby. He showed that the mere scheduling of so-called industrial diseases was not sufficient, and advocated investigation as to how far, in certain industries, a particular disease was regionally prevalent, with a view to making employers proportionately responsible,<sup>3</sup> though he did not suggest how this was administratively practicable. The Committee made no reference in their Report to his evidence, but cited the Report of May 1907 on Industrial Diseases as to the legal difficulties inherent in such differentiations. Yet Professor Collis spoke with experience and responsibility, having been Medical Inspector of Factories under the Home Office before appointment to the University Chair. The Holman Gregory Committee declared:

The extension of the Act to cover any disease or injury which is not specific to employment, would, we are satisfied, give rise to constant and irritating disputes

<sup>1</sup> Cf. A. M. Anderson, *Women in the Factory*, Foreword by Viscount Cave, 1922, p. 50, also pp. 44 sqq.

<sup>2</sup> *Report on Health in Public Schools*, 1938.

<sup>3</sup> Cf. Q. 12102, 12112, and pp. 481-3, *passim*: 'Take an industry—no particular dusty industry—but a dusty industry in which bronchitis is found to exist in excess. I would say that industry, so far as bronchitis is concerned—not as regards disease in general—ought to bear the burden of the excess amount of bronchitis in that industry which is found present.'

and involve employers and workers in a great deal of costly and fruitless litigation and would not, except in rare instances, secure any benefit to the disabled workman.

This shows once more how largely the reasoning of the Report was governed by legal and judicial considerations.<sup>1</sup> In the meantime, in the United States, there was said, even in 1916, to be a growing tendency to include 'any ailment or disease contracted as a result of the nature of the patient's employment' into Workmen's Compensation.<sup>2</sup> This question was not studied by the Holman Gregory Committee, although Mr. Edward Carleton Stone, an attorney-at-law from Boston, who gave evidence as regards American conditions, might have dealt with it.<sup>3</sup>

Apart from the general principles and regulations applying to industrial diseases, the special conditions relating to the recovery of compensation for industrial diseases were reviewed by the Report. The right of the worker to claim, and the liability of the employer to pay, compensation for industrial diseases are subject, by Statute and Regulations made by the Secretary of State thereunder, to certain special conditions which partly adapt and partly amend the general scheme of the Act. We have already seen that many difficult and contentious questions may arise under this section of Workmen's Compensation legislation, and we shall consider later how far this question is crucial. Before a workman can recover compensation he must either have been certified,<sup>4</sup> by the Certifying Surgeon appointed under the Factory and Workshop Act, 1901, for the district in which he is employed, as suffering from the disease and disabled thereby from earning full wages, or have been suspended from his employment by the certificate of another appointed Factory Surgeon in pursuance of some special Rules and Regulations on account of his having contracted the disease.

Proposals were made to the Committee for simplifying the procedure, either (a) by allowing the medical certificate of any duly qualified medical practitioner—subject to appeal to the Medical Referee—to be substituted for the certificate of the Certifying Surgeon, or (b) by abolishing the right of appeal to a Medical Referee.<sup>5</sup> The Committee could not accept either of these proposals, but thought it should usually be possible for the employer to dispense with the certificate of the Certifying Surgeon and to agree to pay compensation on the report either of his own or the workman's doctor or of a doctor

<sup>1</sup> J. L. Cohen, *loc. cit.*, pp. 169 and 175–6, takes the same view, but suggests, in a footnote, that non-industrial diseases should be covered by some other form of social insurance.

<sup>2</sup> Cf. Commons, J. R., and Andrews, J. B., *Principles of Labour Legislation*, New York, 1916, p. 303.

<sup>3</sup> Cf. Q. 18969 sqq.  
<sup>4</sup> Subject to appeal by either party. Certifying Surgeons are now known under the Factories Act, 1937, as Examining Factory Surgeons.

<sup>5</sup> Cf. *Report*, p. 27.

selected by mutual arrangement. Under the Act of 1906, the workman would not have had any power to enforce any such agreement. The Holman Gregory Committee, therefore, recommended that the section in question (Section 8) should be amended so as to make binding an agreement reached in such circumstances.

The Committee were opposed to the abolition of appeals to the Medical Referee, having regard to the wide variety of disease to which the Act applied and the great difficulty of diagnosis in certain cases, but emphasized that appeals should not be lightly entered and noted that, in 1913, the number of appeals under Section 8 in Scotland (192) had been proportionately far greater than in England and Wales (133). 'These figures', declared the Committee (only 27 of the Scottish appeals had succeeded), 'indicate over-readiness on the part of the Scottish employer to avail himself of the right of appeal. We trust this will cease; otherwise, in our view, steps should be taken to prevent continuance.' Appeals to higher courts had, in fact, already much diminished when the Holman Gregory Committee was sitting. In 1921, the appeals in Great Britain were not more than 72, of which only 18 related to Scotland,<sup>1</sup> though during that year compensation was paid in respect of 7,894 fresh cases of industrial disease.

The Committee mentioned, euphemistically, that the provisions governing the liability of employers under this section (8) had been 'somewhat differently interpreted' by the courts in England and Scotland, owing to the divergence of opinion in regard to the meaning of the words 'due to the nature of employment'. The obscurity of the law as shown by legal decisions was so deep that fresh legislation was urgently required. In England, the Court of Appeal held that an employer can escape liability by proving that the disease is not due in whole or in part to the employment of the workman, while in service.

In Scotland, the Court of Session had taken the view that in the cases in question the employer could not escape liability, except by showing either that the disease was not due to the workman's employment in that process, either while in his service or in that of other employers, or by joining some other employer as a party to the arbitration and proving that the disease was in fact contracted while the workman was in the latter's service. The Committee advised amendment of the section, so as to make it clear that an employer is not liable if he can prove that the disease was not due in whole or in part to the employment of the workman while 'in his service'.<sup>2</sup> This recommendation seems

<sup>1</sup> Cf. *Statistics of Compensation for 1922, 1923*, p. 26.

<sup>2</sup> Cf. *Report*, p. 28, and Q. 21100 sqq. As may be gathered from the interrogatory, the divergence of opinion was largely due to a different interpretation of the words 'employment' and 'process' which it was proposed to avoid by the term 'in his service'.

better calculated to protect the employer than to help the workman and was not adopted by the government. In England the employer was entitled to show that, although this process was in operation at his works, such precautions had been taken that it was impossible that the disease should have been contracted; in Scotland the view was that it did not matter what the employer proved; if the process was a subject of employment, that was conclusive proof of liability.

The Committee proposed that the powers of medical referees should be enlarged so as to authorize them not only to decide matters on appeal, but also to pronounce on the actual condition of the workman at the time of examination.<sup>1</sup> The recommendation was made in connexion with cases in which the workman, although disabled by disease when the Certifying Surgeon gave his certificate, had recovered by the time that he was examined by the Referee; or, conversely, where the Referee found that the workman, although not suffering from the disease when the Certifying Surgeon's certificate was given, was so suffering at the time of the examination by the Referee. To assist the parties in such cases and to diminish disputes, it was proposed that the Referee should be directed to add to his decision on appeal a certificate as to the actual condition of the workman as ascertained at the time of his examination.

Apart from these recommendations the Committee was unable to formulate any constructive and comprehensive scheme of improvement in the matter of industrial diseases which form so important a part of Workmen's Compensation. They could not find a means of placing the matter on a broader basis than that of scheduled diseases, relying apparently upon the advantages anticipated from the establishment of compensation funds formed by contribution of all employers in an industry. This scheme, however, never received general acceptance.<sup>2</sup>

The facts set out above, as to the way in which injuries were received or diseases contracted, are not the only relevant circumstances to be considered in connexion with Workmen's Compensation. They are connected with what we may term the 'objective' or 'material' conditions surrounding Workmen's Compensation. Another group of facts, of no less importance to the workman, relate to 'subjective' or 'personal' conditions connected with his possible claim: Who are, or should be, the persons entitled to receive such compensation, with due regard to the trade or trade group of the workmen in question, their age, their income, and the regularity of their employment? Who are, or who should be, the dependants entitled to claim compensation for the loss of a relative?

<sup>1</sup> Cf. *Report*, Section 35, and p. 70.

<sup>2</sup> Cf. *Report*, p. 25.

Important alike to the injured workman and his family as is this complex of questions, it is by no means so complicated as those considered above, or as the difficult problems relating to the settlement and administration of compensation payments. These subjective conditions within the scope of the legislation are less matters of dispute on grounds of principle than is the question how far those on whose recommendation the legislature is accustomed to act are willing to go in regard to the grant of compensation.

British statesmen are less influenced by theoretical and general considerations than by considerations of expediency; by the changing conditions of wages and prices; and by financial and other necessities. The Holman Gregory Report studied these subjective or personal conditions closely and made recommendations which, though not wholly embodied in subsequent legislation, are of great importance.

The persons to whom the compensation is payable are, in the case of a non-fatal and fatal accident respectively, the injured workman, and the dependants of the deceased workman. These two groups of claimants—'workman' and 'dependants'—must be carefully distinguished when studying the Committee's proposals, which were as follows:

(1) An increase in the upper wages limit of those non-manual workers entitled to benefit from Workmen's Compensation from £2 50, as in the Act of 1906, to £3 50. This change mainly affects clerical workers but brought within the scope of the Act a number, which tends to increase, of skilled and semi-skilled technicians and administrative workers of all ages. The Committee pointed out that the rise of wages in recent years excluded from the operation of the Act men, particularly in clerical trades, who previously had been included.<sup>1</sup>

(2) It was suggested that all forms of casual labour should be brought within the Act,<sup>2</sup> whereunder a number of workers in particular circumstances remained at that time without remedy.<sup>3</sup> Several witnesses saw no difficulty in insuring all casual workers. 'The existing rule' results in ludicrous inconsistencies; e.g. *A* employs a casual *B*, to

<sup>1</sup> *The General Report on the Census of Production (1930) of the United Kingdom*, published in 1935, shows (p. 84) that 'a relative expansion of the controlling and clerical staffs was common to all the groups of manufacturing industries and was one of the most striking changes disclosed by the Census. . . . For the Factory Trades alone the aggregate numbers of the administrative technical and clerical staff increased from 511,600 in 1924 to 589,200 in 1930, forming 10·5 per cent. of all employees in the earlier and 12·1 per cent. in the later year. In the same period operatives declined in numbers from 4,345,000 to 4,286,400.' There is little doubt that this tendency has persisted between 1930 and 1938.

<sup>2</sup> Cf. Sec. 13 of the Act of 1906: "'Workman' does not include . . . a person whose employment is of a casual nature . . . and who is employed otherwise than for the purpose of the employer's trade or business. . . ."

<sup>3</sup> Cf. *Evidence*, Q. 9819-22.

clean windows, on Mondays at his works, on Tuesday at his private house. If *B* is injured on Monday, he gets compensation; if on Tuesday, he gets nothing. Asked (by Mr. Bannatyne) how he would get over the difficulty, as one could not expect a man 'to go to an insurance company and insure a very remote risk of that sort', Judge Ruegg pointed to the state scheme under the British Columbia Workmen's Compensation Act, adding:<sup>1</sup> 'If the State insures there is no difficulty.'

Another witness, Mr. Arthur Worley, C.B.E., speaking as manager of several insurance companies, expressed his surprise<sup>2</sup> that casual labourers had not long since been brought within the scope of Workmen's Compensation. As to the principle there was no difference of opinion; its application, however, was barred by apprehensions of legal complications, though the attitude of private insurance companies was helpful. The only reform which the Committee thought fit to recommend in this respect was to propose that (as in the National Health Insurance Act of 1911 and the Unemployment Insurance Acts) employment of a casual nature for the purposes of any game or recreation where the persons employed are engaged or paid through a club should be covered by the new Act.

(3) The Committee advised<sup>3</sup> amendment of the law which, as it stood, had been held to exclude London taxi-drivers from its benefits. Here we have another case of 'judge-made' law which it is worth while to note. Two decisions (of 1910 and 1911, *Doggett v. Waterloo Taxi-Cab Company* and *Smith v. General Motors Cab Company*) upheld findings that London taxi-cab drivers were 'bailees of their cabs', not servants of the cab-owner, and, therefore, not workmen within the meaning of the Act as county court judges had hitherto held. There could be no doubt as to the state of law outside London where taxi-drivers were remunerated by a fixed wage; the Holman Gregory Report expressed the view that the distinction made as regards London taxi-drivers was 'one of form rather than of substance'.

(4) The Committee found it necessary to distinguish between 'trawler fishermen' and the 'herring fishery'. Workers were barred from the advantage of the law by a narrow reasoning, in this case of the British Trawlers' Owners' Federation, which argued that trawler-men, being partly paid in wages, partly by a share of the proceeds of the catch, were not workmen but 'co-partners' and 'co-adventurers', though in all material aspects the contractual relationship between the trawler-owners and the fishermen is that of master and servant. There

<sup>1</sup> Cf. Q. 6518-21.

<sup>2</sup> Cf. A. 17694.

<sup>3</sup> This recommendation was not fully acted upon until 1938, when the Workmen's Compensation Amendment Act was passed on the initiative of Mr. R. A. Cary, M.P. (C.).

was no excuse for their exclusion; the herring industry, however, has from its earliest days been conducted on a profit-sharing system. Its inclusion was not recommended by the Committee, although it suggested that in the future it should be a matter for the proposed Commissioner to decide whether herring-fishers (and any other class of fisherman) should be brought under the Act.

(5) The position of seamen did not appear in all respects satisfactory. Section 7 of the Act of 1906 brought most of those employed on a ship under its rule, conditions being, in the main, the same as with other workmen. They differed, however, as to the service of notice of accident and claim, as to the time within which proceedings might be commenced, as to evidence, and also as regards the scale and conditions of compensation. It was an evident defect of the law that not all persons employed on British ships were included, but only 'masters, seamen, and apprentices to the sea service, and apprentices to the sea fishing service, provided they were "workmen" within the meaning of the Act and members of the crew'. This meant that, for instance, bandsmen (as in the *Titanic* disaster) had no claim, and that persons employed in the post office of the ship, or barbers and others employed by a contractor, were not included. The Report proposed to widen the range of those entitled to benefit under Workmen's Compensation so as to include these and similar types of employees, that is, 'all persons resident in this country who are employed or are travelling in the course of their employment on a British ship'.<sup>1</sup> There was also a recommendation made adapting liability of the shipowner to the general liabilities of employers under the Workmen's Compensation Act and to bring this Act into harmonious working with the Merchant Shipping Acts' regulations in this matter.

We have described the framework within which Workmen's Compensation operated. The next task for the Holman Gregory Committee was to inquire into the benefits to which, within this framework, the injured workmen or their families should be entitled; in dealing with the recommendation of the Committee in this matter, we shall have less regard to their proposals as to the actual sums to be paid (for economic conditions have again greatly changed since the beginning of the twenties) than to the salient points of these recommendations so far as they are still of importance.

<sup>1</sup> This phrase as it stands could be read to mean that, if an officer returning from leave with his family took a nurse with him and the latter met with an accident, the case would come within the Workmen's Compensation Acts. This may or may not be desirable but was not intended, and shows the difficulty of finding the correct form of words to express a given intention.

The Report first reviewed the problem of benefits in connexion with 'fatal cases'. The principle here, as well as in the case of compensation payments during incapacity, was to assess the amount payable by the employer by means of a calculation based on the workman's earnings, and the Committee were at pains to consider whether such a system should be retained in the future. Many judges wished to abolish this method of assessment in fatal cases, mainly or partly on the ground that it gave rise to difficulties which could only be solved by litigation. His Honour Sir Edward Bray, giving testimony in this sense, quoted a case where the question as to whether a widow was entitled to £206 or £300 depended on whether in a particular week of the previous year the deceased workman was deemed to have been in the respondent's employment. 'Why should the amount of the widow's compensation depend on such a point as this? Is it not desirable to make some attempts, at least to frame some scheme which will no longer make the amount of compensation dependent on the solution of questions which should not really affect the amount of compensation at all?' His Honour Judge Fossett Lock expressed the view that 'the average earnings of the individual is not a satisfactory basis to go upon, and is often extremely unjust'. He cited the case of a hard-working invalid man, able to work only half-time, but an excellent father bringing up his children well, and contrasted him with a strong man able to work full and even over-time, but a bad husband, giving only a third of his income to his family—which, as the judge remarked, was not uncommon. On the deaths of the breadwinner in each case, the bad man's family may have three times as much compensation as the good man's.<sup>1</sup> Mr. Lowe, speaking for the Association of County Court Registrars, took the same view:<sup>2</sup>

In our view the amount payable should not depend upon the man's earnings because, theoretically, the better paid workman should be in a better position to make some provision for his dependants than the labourer.

In face of this concurrence of expert testimony, the Committee could not dispute the necessity 'to adopt the principle of fixed benefits for the different classes of dependants without reference to the earnings of the deceased workman',<sup>3</sup> but this view was strongly opposed by one of its members, Mr. Reginald Guthrie, representing mine-owning interests, who, in a dissenting Memorandum, invoked the 'spirit' of the first Compensation Acts, which was to be understood as intended to give no more than 'a moderate and limited amount of the loss of such wages as workmen were incapacitated from earning in consequence of accidental injury'; and from such interpretation it certainly followed

<sup>1</sup> Cf. Q. 6368-70.

<sup>2</sup> A. 9208.

<sup>3</sup> Cf. *Report*, p. 37.

that the compensation in fatal cases would have to be computed accordingly.<sup>1</sup> The spirit in which this member of the Committee faced the problem could not have been better disclosed than by a question he put to a witness:<sup>2</sup>

If the man cannot earn that money because, owing to the conditions of the trade, he can only work four days out of six, why should he be compensated on the basis of a full week's pay?

Here, indeed, was a clash of fundamental principles. Taking for granted a principle which the framers of Workmen's Compensation themselves had not regarded as fundamental, but merely as the best expedient to be attained for their first tentative measure, the one side argued on a mere technicality; the other took the broader view of the ultimate, and indeed ideal, end to be reached—to compensate the workman and his family as fully as possible for an injury incurred in the course of his occupation. The Committee in this respect deserve high praise. They declared:

We are unanimously of opinion that the pressing need at the present time is that adequate provision should be made to secure that children of a fatally injured workman should have a reasonable chance of developing into healthy and intelligent members of the community and that within proper limits all interests should be subordinated to the attainment of this object.

In dealing with the compensation to be paid to 'total dependants', the Committee made it quite clear that a method of compensation which has no regard to the age, conditions, needs, or even numbers of the surviving dependants must result in anomalies and must work unfairly in the case of families. A young widow with no child and well able to support herself may be awarded the same amount of compensation as a widow with a number of small children. They stated that no suggestion throughout the inquiry received such strong and unanimous support as the suggestion that, in computing compensation, regard should be taken to the number and condition of dependants left by the deceased fatally injured workman. The Report quoted cases as follows: £300 compensation was paid to a widow having three boys of ages 11, 9, and 5, and the same amount to another widow whose husband was 71 at the time of his death and had no dependent children.

While the 'average weekly earning' has not been eliminated by later legislation, the recommendation of the Committee in regard to the number of dependants of a fatally injured workman has been accepted by the Act of 1923; but their far-reaching proposals, particularly as regards the payment of weekly allowances to children, were

<sup>1</sup> Cf. *Report*, pp. 75-6.

<sup>2</sup> Q. 16134.

not embodied in subsequent legislation. If the recommendations of the Committee had been accepted the result would have been: a payment of £2 50 if the only dependant was a widow; if the dependants were a widow and a child or children under 15 years of age, the compensation would have been £750, i.e. £2 50 to the widow and £500 in respect of such child or children. In the event of the only dependants being a child or children under 15, the compensation would have been £500. The sums payable in respect of children under 15, whatever their number, were to be pooled and invested by a particular method, recommended by the Report in detail, in order to provide weekly allowances; the proposed Workmen's Compensation Commissioner was to undertake the distribution of the weekly payments through the County Court Registrars.<sup>1</sup> Where other total dependants, in addition to those mentioned above, were left, a further sum not exceeding £50 was to be given. Where total dependants were left, not including widow or children under 15, the sum of £2 50 was proposed to be the compensation. There were further recommendations as regards partial dependants and it was also recommended to increase burial and medical expenses from £10 to £15.

The second main branch of our problem relates to cases of total or partial incapacity; the question before the Committee being, in some respect, similar to one which we have already met in discussing the adequacy of compensation in regard to the varying conditions which may be characteristic of the workman's economic status. The weekly payment during total incapacity had been fixed as a sum not exceeding one-half of the average weekly earnings during the preceding twelve months or any less period with the same employer, with a maximum of £1.

Mr. Guthrie considered the claim of the National Federation of Women Workers, that full wages ought to be given to the injured workman, as a 'complete revolution in the principles on which the Workman's Compensation was based', disregarding the fact that the 'revolution' came when the right to compensation was conceded, and that, this principle once recognized, the amount was a question only of justice and expediency.

Do you think [he asked]<sup>2</sup> that it would encourage a tendency on the part of the workman to extend the period during which he should be off work? If a person is getting full wages whilst he is away from his work, unless he is a very industrious man, he will not be very anxious to get back to work. If a man is getting £4 a week when at work by doing very hard work, he will not be very anxious to undertake that hard work at the earliest possible moment, will he?

Miss Susan Lawrence replied: 'I should have thought that a medical certificate would guard against that.' Mr. Guthrie was arguing from

<sup>1</sup> Cf. *Report*, p. 40.

<sup>2</sup> Cf. Q. 808.

what he apparently 'thought' to be the case. He theorized about 'the human element', which, in his opinion, was a stimulus to 'malingering'. He did not stop to reflect that the effect of a small compensation upon the workman's home and family might, on the contrary, induce him to re-start work too soon. Miss Lawrence retorted that 'many injured workmen, and women in particular, do not get enough rest after an accident'. If, instead of advancing theoretical contentions, Mr. Guthrie had read the conclusion which the Committee of 1911 had reached in regard to 'malingering', he would probably have been more discreet in his insinuations; for their Report made it clear that the average injured workman is by no means disposed to malingering.<sup>1</sup> Ten years later the Holman Gregory Report came to the same conclusion after having 'made careful inquiries of employers and Insurance Companies' officials'. 'We are satisfied that the average workman is anxious to return to his work as soon as he is able, and is not disposed to malingering.' This unconditional statement ought to be remembered whenever the possibility of malingering is made an argument against further improvements in scales of compensation.

Another member of the Holman Gregory Committee who pressed upon witnesses his view in the matter was Mr. Arthur Neal, M.P. (Lib.) (cf. Q. 1471):

One of the main arguments against high compensation has been that a limited compensation produces the maximum inducement to a man to return to a state of efficiency either in his own industry or some other suitable employment. You appreciate the importance of that from the man's point of view, do you not?

A. (Mr. G. H. Bunning, O.B.E., J.P.). If it is correct, yes.

Q. 1472. Is it not the fact?

A. No, I do not agree.

A. 1474. I do not agree that because a man would get 75 per cent. compensation it would in the vast majority of cases act as an inducement to stay away from his work. . . . I do not think it is a sound view.

Mr. Bunning spoke as Chairman of the Parliamentary Committee of the Trades Union Congress.

Long periods of unemployment have enhanced in the workman's view the benefit of being employed; the old slogan—not correct even in former days—of the 'won't works' is less true than ever. To argue that increased benefits would result in a desire of the workman to remain idle is not far from those narrow-minded conceptions by which in bygone days<sup>2</sup> every increase in wages or any reduction in working hours was opposed by certain spokesmen. There could be no better

<sup>1</sup> Cf. *Report of the Departmental Committee on Accidents in Places under the Factory and Workshops Acts, 1911*, Cmd. 5335, p. 17.

<sup>2</sup> Cf. Hermann Levy, *Economic Liberalism*, 1913, pp. 78-82.

answer to it than that given by the Holman Gregory Report and quoted above.

Mr. Guthrie, representing mine-owners, in a dissenting Memorandum declared that 'there are amongst workmen, as amongst other classes, persons who are willing to remain off longer than necessary if financial encouragement is given to them to do so'—as if this should be a reason to refuse justice to the vast majority! Another dissenting Memorandum, signed by Sir Walter Kinnear, Sir Alfred Watson, and Mr. W. R. L. Trickett, held that benefits should not be too ample<sup>1</sup> and referred to 'a condition of inertia which is so frequently set up by illness'. To this Memorandum full weight should be given, as all who have experience of the National Health Insurance Acts are aware. Before proposing its own improvements of benefits, the Report dealt with a recommendation to adapt compensation more justly than by automatic computation according to weekly earnings, i.e. to bring it into a relationship with 'the workman's needs'; for example, according to whether he is married or single, and if married, according to the number of his dependent children; in other words, to make the governing principle the needs of the family rather than the loss of wages.

The Committee cited a weakly man, with wife and two children, able to earn only £1 a week, and a young bachelor earning £3 a week; in the event of total incapacity, the former would have got 10 shillings a week, the latter £1. Their arguments against a redress of such anomalies by adapting benefits to social conditions were mainly of a formal character; compensation, it was contended, should not vary except with wages. A workman's domestic responsibilities were no concern of his employers; elaborate inquiries into such personal circumstances would increase delay before payment of compensation.

The Committee avoided the issue by advising a uniform increase in the scale of compensation. For total incapacity it proposed a weekly compensation equal to two-thirds of the injured workman's weekly earnings. It stressed the point that this percentage was the scale (though maximum) for total disability under the German Insurance Code.<sup>2</sup> In consideration of the change of average-wage conditions since the passing of the former Acts, it further proposed an increase of the present English maximum of weekly payments from £1 to £3.

The settlement of a satisfactory basis of compensation for partial incapacity is an even more complicated problem. The 1897 Act had given the arbitrator no more satisfactory guidance than the rule that, 'in fixing the amount of weekly payment, regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident and the average amount which he is able

<sup>1</sup> Cf. *Report*, pp. 75 and 80.

<sup>2</sup> Cf. *ibid.*, p. 43.

to earn after the accident'. The 1906 Act tried to achieve greater precision and prescribed that

in the case of partial incapacity the weekly payment shall not exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

The effect of this provision was to allow as compensation during partial incapacity a sum not exceeding the lowest of three maxima:

1. One-half average weekly earnings;
2. The sum of £1;
3. The difference between pre-accident earnings and the amount which the workman is earning or is able to earn in some suitable employment after the accident.

From this it follows that the basis for compensation for partial disability has hitherto been a proportion of the wage-loss resulting from disability. The demand of labour representatives was directed towards compensation on the basis of the full wage amount.<sup>1</sup> The method described is complicated, and representatives of trade unions before the Committee urged that on a basis of full earnings such complications would disappear. The method is known as the 'percentage' method. Its advocates claim that it is a fair method of assessing compensation, inasmuch as it enables wage-loss to be revised according as it develops or decreases as time goes on.

The Committee also called attention to a method of assessment in vogue in several countries, called the 'schedule' method, whereunder a schedule of specified injuries is compiled and injuries are shown as a fixed percentage of total disability. Taking an illustration, for instance, from a schedule based on the collective experience of a number of German mutual insurance associations: in the case of the unskilled workman, the degree of disability expressed in percentage of total disability is, for the loss of the right arm, 60; right index finger, 15; leg, 60; great toe, 10; one eye, 25. The Report commented on both systems, the English and the German.<sup>2</sup>

The great advantage of the 'schedule' method is that it offers a solution of the

<sup>1</sup> Cf. Index to vol. ii of the *Report*, p. 460, under *Compensation: Incapacity*, partial, particularly Q. 2310-16; also Cohen, loc. cit., p. 121: 'The Labour Party proposes that in such cases the payment made should be the full difference between wages earned prior to the accident and the wages received for the light employment. Their attitude is that they do not object to any reasonable precautions being taken against abuse, but hold strongly that workmen should not financially be worse off when suffering from the effects of an accident.'

<sup>2</sup> Cf. p. 44.

problem of reducing to some sort of order the present chaotic arrangement which, according to evidence before us, results in substantially different awards being made for permanent partial incapacity arising out of the same kind of injury to the same type of workman, according as the arbitration is heard in one County Court circuit or another. *It is this uncertainty in respect of the sum due which is responsible for the bargaining between workmen and agents of Insurance Companies and Mutual Associations of which much complaint has been made and which has led to cases where the Insurance Company offers one sum, the workman demands a different sum, and agreement is arrived at between them, and that agreed sum is substantially increased when it comes before the Court for approval.*

Here we have a very characteristic case of how complications of the law may immediately lead to controversial matters, which again are liable to be exploited by the stronger of two parties. The Report drew attention to the experiences in countries, like Germany, France, some States of the U.S.A., and even Russia, where disability schedules had been worked out and practised. It considered the matter, however, as being still too much controversial to be adopted in England without further inquiry; but it left no doubt that it considered 'the matter' as one 'which should not be lost sight of', as 'the want of uniformity in awards and agreements for permanent partial disability is so serious a blot on our present system'. The Report suggested that the proposed Commissioner should institute the necessary investigation and elaboration of the schedule, and deal with the same in his suggested reports to Parliament. Here another useful function of the Commissioner was disclosed; but as he was never appointed the matter dropped.

The recommendations which the Report now made in regard to partial incapacity were that, in accordance with the respective proposals in regard to total incapacity, two-thirds of the difference between the average weekly earnings before the accident and the average amount the workman is earning or is able to earn in some suitable employment after the accident should be paid, while the workman should be entitled to certain increases of compensation (or the employer to a respective decrease) in the case of a later increase (or decrease) in wages in the district. The Report further recommended that, in the case of minors, compensation should be based upon the same percentage of earnings as in the case of adult workmen, but that the existing special provisions for reviewing weekly payments should be continued with certain amendments. We shall revert to the important matter of compensation of minors later in our inquiry.

Since the passing of the Workmen's Compensation Acts, which provided compensation only in cases which fall into one or two well-defined classes, death or incapacity, the question of compensation for

disfigurement has made its appearance. The problem is doubtless of great importance, and particularly to women workers, and here again in every case where exterior appearance is not only a matter of aesthetic but also of commercial or 'service' value. The law as it now stands draws a sharp distinction between 'disfigurement' and 'physical disability', in respect of which alone compensation under the Workmen's Compensation Act can be awarded. How nearly disfigurement may approach physical disability was shown in a classic statement made by Lord Justice Fletcher Moulton in the so-called Cardiff Case,<sup>1</sup> a case, however, which related to incapacity. Here the term of the 'odd lot' man first appeared. 'A man', so it was said, 'might be an "odd lot" on the labour market even though his employer has found him work for a number of years.' There is no reason why disfigurement should not lead to such cases, although 'physical' disability might be absent. Badly disfigured, a man or woman might well be an odd lot on the labour market, and it should matter little in principle whether the person is fully or only partially 'incapacitated' by disfigurement.

The Holman Gregory Report quoted a decision of the House of Lords, by which it was held<sup>2</sup> that disfigurement which was such as to leave the workman physically able to do his old work but which nevertheless prevented him from getting such work was properly the subject of compensation. This, however, does not appear to be quite to the point. A disfigurement of the body by an accident or injury involves a permanent deterioration both of the workman's human appearance and of his status. It may be just as painful to the disfigured worker not to be able to move about or to marry as others do, as to suffer loss of earning capacity. Miss Susan Lawrence urged<sup>3</sup> the claim 'of a girl burned on the face' or a girl who loses a little finger or an eye, all cases of permanent damage, where 'it is sometimes very difficult indeed to put into figures any loss of earning power at all', but 'which might ruin her whole pleasure in life'. The evil of disfigurement was well illustrated to the Committee by a witness who handed in an X-ray plate to show the disfiguring injury a carpenter had received. He particularly stressed the point that workers wished to have 'the same benefit and ought to get the same benefit as a wealthy person, who would be able to pursue an action at Common Law'. Here, again, it became evident that the questioners showed very little sympathy with such viewpoints. 'Would you go so far as to extend it to psychological and intellectual compensation?' he was asked rhetorically.<sup>4</sup> Another witness was asked by Major Farquharson, M.P. (Lib.), a

<sup>1</sup> *Cardiff Corp. v. Hall* [1911]. Cf. also Willis, p. 277.

<sup>2</sup> Cf. *Ball v. William Hunt & Sons, Limited*, [1912] A.C. 496.

<sup>3</sup> Cf. Q. 651-2.

<sup>4</sup> Q. 9618-22.

doctor, whether he would concede a higher compensation in the case of loss of an eye to a good-looking or a plain woman, and whether the witness thought that 'the chances in the marriage market would be lessened in the one case as in the other'; the witness retorted that he knew nothing about the marriage market, but that his point was that at present both women would get nothing.

Judicial humour, wisely used, may serve to further the ends of justice by relaxing intellectual strain and introducing a momentary community of feeling between bench and litigants, but such questions, and those asked by Mr. Guthrie and Mr. McBride on several other occasions, seem to have been framed not to elucidate, but to import an element of prejudice, into any discussion of the question at issue. Such questions having been asked, without protest from other members of the Committee who displayed no interest in, or sympathy with, the contentions of this witness, it is not surprising that the Committee, in framing its final recommendations, took the view that it would involve inclusion within the Act of an 'entirely new class of benefit'—as if to propose such an extension was beyond the terms of reference.

The members of the Committee noted that their recommendations in respect of increased benefits for widows and children and for disabled workmen were such that they could not 'lightly contemplate the imposition of additional burdens for new forms of benefit', and did 'not feel at liberty to recommend compensation for disfigurement, which does not result in loss of earning capacity'. Not financial but legal considerations in fact barred the way, for the additional cost would have been negligible. The fact that the injured workman received his injuries, not merely in his capacity as worker but also as a human being, was ignored, and the disparity between Workmen's Compensation Acts and the Common Law in this regard suffered to remain.

The waiting period, so far as concerned compensation payment, was treated by the Committee under 'Benefits', though the waiting period itself may legitimately be regarded as a deduction from the benefits, which normally should date from the day of injury. But, as this period might be lengthened or shortened by the legislature, any shortening comes to be regarded as a 'benefit' to the injured party.

It will be remembered that the Act of 1897 withheld compensation in respect of any injury which incapacitated the workman for less than two weeks, and payments began not earlier than the beginning of the third week after the accident. The 1906 Act introduced a somewhat complicated arrangement whereby no compensation was payable for incapacity lasting one week or less; for incapacity lasting more than one but less than two weeks, compensation was payable, but only for the days after the first week; for incapacity lasting two weeks or more,

compensation was payable from the commencement of incapacity. There was much discussion at that time as to such provision encouraging a workman to lie up for a few days in consequence of a trifling accident in order to extend his period of incapacity to fourteen days so as to receive compensation for the full period. The Committee of 1920 received some interesting evidence on the subject relating to a particular district. At the same time, the cases of longer incapacity showed an increase.<sup>1</sup>

|  | <i>Durham</i> |             | <i>Northumberland</i> |             |
|--|---------------|-------------|-----------------------|-------------|
|  | <i>1906</i>   | <i>1918</i> | <i>1906</i>           | <i>1918</i> |
| Persons employed                       | 128,483       | 134,151     | 46,494                | 45,517      |
| Non-fatal accidents                    | 17,931        | 17,285      | 5,621                 | 5,315       |
| Cases of less than two weeks' duration | 9,786         | 1,753       | 3,159                 | 700         |
| Percentage of total                    | 54.60         | 10.0        | 56.20                 | 13.20       |
| Cases of two weeks' duration or more   | 8,145         | 15,532      | 2,462                 | 4,615       |
| Percentage of total                    | 45.4          | 90.00       | 43.80                 | 86.80       |

The witness (Mr. Cooper, representing two Mutual Protection Associations) drew his own conclusions.<sup>2</sup> Pointing to the fact that in 1918 only 10 per cent. of the non-fatal cases caused less than two weeks' duration of incapacity as against 54.6 per cent. in 1906, while the percentage rose from 45.4 per cent. to 90 per cent. where incapacity lasted for more than two weeks, he argued that the shorter waiting period had induced the injured men to 'continue to lay off work for more than 14 days so as to claim back from the first day'. 'It seems to me, to expect a man to do otherwise is really putting too great a strain upon him.' It was clear where the danger of a long waiting period lay. So far as the intention of the framers of the Act of 1906 was to reduce the burden to the employer by making the waiting period somewhat long, and to use this period as a financial incentive to the workman to return early to work, it had failed. The Holman Gregory Committee did not endorse the suggestion, but urged that compensation should be paid from the date of the accident.<sup>3</sup> To abolish the waiting period altogether would be productive of a vast number of 'trivial' claims, and 'employers would be in the dilemma of either having to spend considerable time and money in investigating a multitude of small claims or of paying them without proper inquiry on the ground that it was cheaper'. Either course seemed objectionable to the Committee, which recommended a waiting period of three days with no dating back, a compromise which can be justified on grounds of expediency.

<sup>1</sup> The figures given relate to collieries, in Durham and Northumberland (whose owners Mr. Guthrie represented). <sup>2</sup> Cf. A. 6118-20. <sup>3</sup> Cf. loc. cit., p. 48.

The whole compensation justly due to the injured or diseased workman is not susceptible of adjustment in cash, nor is deprivation of earning capacity the only loss suffered. Rehabilitation, both functional and, if possible, organic, is, alike to the injured person and to society, of even greater importance. The Holman Gregory Committee drew attention to it, but stopped short at making comprehensive recommendations. Its attention was earnestly drawn to the relationship of medical services to compensation schemes in other countries—an aspect of Workmen's Compensation with which we shall deal fully at a later stage. Mr. C. M. Knowles, of the Home Office, pointed to the German system, which provided that the workman shall go on sickness benefit (under and as a charge against the German National Health schemes) for the first thirteen weeks, and on accident benefit from the fourteenth week. For injury resulting in incapacity, the injured German worker received medical treatment from the beginning of the fourteenth week after the accident, and a pension during disablement, unless free medical treatment and maintenance in an institution are given instead.

Mr. McBride, representing insurance companies, hastened to denigrate the German system, of which he had apparently never heard before, by a series of rhetorical questions. He suggested that the German scheme was 'complicated' and 'tries to do a lot of things and makes a mess of most of them', a contention to which Mr. Knowles replied: 'I do not know that I agree with that. I should not assent to that with regard to the German insurance scheme.'<sup>1</sup> A discussion on the merits of the German system was thus—once more—cut short by a single partisan member of the Committee with the silent assent of the Chairman and his colleagues, none of whom asked any questions.

The American inquiry into the German and English systems (see p. 157, *supra*) was completely ignored. It is nowhere referred to in the Report and may have been unknown even to the Home Office. An American expert, Mr. Edward Carleton Stone, from Lexington (U.S.A.), to whom reference has already been made, explained at length<sup>2</sup> to the Committee both the theory and practice of the Workmen's Compensation Laws of Massachusetts, and drew particular attention to the insistence therein on the importance of medical and surgical aid. His evidence (see also p. 157) was illuminating. He declared that in Massachusetts 'the insurance companies believe it to be money in their pockets to see that the employee gets treatment [in the case of incapacity to earning full wages] even beyond two weeks, because it prevents septicaemia—it prevents what might be a very bad

<sup>1</sup> Cf. Q. 8042-6.

<sup>2</sup> Cf. Q. 18979, 19004-5, 19073-81, 19247, 19342-3, 19361-80, 19590-606.

accident from getting worse'. The Massachusetts Employees Insurance Association had by its rules to furnish medical and hospital services and medicines when needed, in a case of emergency or for other justifiable cause. A physician, other than the one provided by the Association, might be called in to treat the injured employee, and the reasonable costs of his services were payable by the Association. By a later amendment the employee was given the right 'to select a physician other than provided by the Association'. He further explained that the insurance companies had their own hospitals and nurses and that in many cases they were able to get 'better doctors than the employees themselves'. 'They have surrounded themselves, in Massachusetts at least, with finer medical experts than the profession can provide. They are not afraid of spending money on operations and hospital attention, and the result is that no workman under the Compensation Act is neglected in this regards'<sup>1</sup>—while, as we have just seen, even fifteen years later a member of the Holman Gregory Committee could, without contradiction, declare, doubtless under the influence of sentiments aroused by recent hostilities, that the German system 'attempted many things but had made a mess of most of them'.

Mr. Stone explained that the famous Ohio State Fund was inaugurated in consequence of a speech on the matter made by the then German ambassador at Washington, Count Bernsdorff. The citizens of Ohio', explained Mr. Stone, 'did not stop then to think that the underlying motive of the German idea was mere paternalism<sup>2</sup> and the centralization of all power in the State rather than the real benefit to the working man as an individual.' The Superintendent of Insurance to the State of Ohio, Mr. Arthur I. Vorys, described in a Memorandum the details of Count Bernsdorff's lecture. The Report of the Commission appointed to consider the matter of Workmen's Compensation clearly showed how 'the Commission was influenced by what they had heard there with respect to the German system'. The social efficiency of the medical aid functions of the Ohio scheme has

<sup>1</sup> The American system was greatly influenced by, if, indeed, it was not based upon, the German model. The Commissioner of Labour had issued a very exhaustive Report about it in 1895, and we have already quoted the Report prepared for the Universal Exposition of St. Louis, 1904, by the German Imperial Insurance Office; medical and surgical aid was an integral part of the German scheme from its inception. 'There is no provision under English law at all corresponding to the "expenses of cure" provided for in the German system', wrote Mr. Wotzel in 1905 in his Memorandum to the Departmental Committee (Report of 1905, p. 23), adding: 'English law simply requires a payment from the employer and leaves the medical treatment to be furnished by the workman himself or the benefit club, if any, to which he belongs, or by such assistance in hospital or otherwise as may voluntarily be given him.'

<sup>2</sup> This fact was recognized in England in regard to accident prevention by so early an authority on social matters as Tremenhere.

never been questioned, although there have been discussions of its costs and economic management.<sup>1</sup>

The testimony as to British practice given before this Committee contrasted sharply with the picture fairly presented to the Holman Gregory Committee by the American witness of American medical and surgical aid for the injured workman. We may give some illustrations:

Q. 3398. You are aware that in the county of Lancashire there are very many weaving accidents to the eyes of workmen?

A. (Mr. John Whittle, a solicitor). Yes.

Q. 3399. Is it your experience that in nearly every case a specialist has to be seen?

A. In every case.

Q. 3400. At the exclusive charge of the injured person?

A. In almost every case a specialist is absolutely necessary, and the injured person has to pay the specialist, and he has to pay a very high fee.

The witness mentioned that in Preston hospital accounts were rendered to the injured men and, 'if there is a truss to buy, they send him to an instrument maker in the town and say: "You must get a truss", probably two guineas, and he has to pay'. There were, no doubt, cases where employers or their associations provided injured workmen with appliances,<sup>2</sup> but they were exceptional. His Honour Judge Fossett Lock of the Hull Circuit declared:

The basis of compensation should be widely extended beyond mere pecuniary payment; and should include curative treatment for the curable and training for those incapacitated for their old work . . . ordinary surgical operations can be performed gratis in most general hospitals; but curative treatment of the simplest kind is not available in all my wide district stretching from Whitby in the North, to Hull, South-East, and Barnsley, South-West; there is no institution in which any curative treatment can be given. Just outside the district, in Sheffield, there is a private institution, which is too expensive for any workman, but occasionally a generous employer will pay for a workman to go there, but it is very expensive.

The witness urged that 'now that special hospitals and institutions have been formed for soldiers and sailors, they ought to be retained and worked for industrial casualties'. 'There are', he added,<sup>3</sup> 'hundreds

<sup>1</sup> Cf. Cohen, *loc. cit.*, p. 67, and Walter F. Dodd, *Administration of Workmen's Compensation*, New York, 1936, pp. 472-4.

<sup>2</sup> Cf. evidence of Mr. Robert Watson Cooper, A. 6150: 'We have frequently had cases where we have gone out of our way to provide an artificial limb for a man. We do it as a matter of ordinary business common sense, because if we provide him with an artificial limb and he is an honest man and anxious to get back to work, he gets back sooner.' Cf. also Q. 6280-3.

<sup>3</sup> Cf. Q. 6448-51.

of people walking about in my district practically permanently incurable because they have not had the curative treatment at the proper time.'

Mr. Daly, Secretary of the Dublin United Trades Councils and Labour League, likewise testified to the insufficiency of the treatment of injured workmen, particularly in cases of septic poisoning, because the workmen were unable to procure adequate medical attention, adding:

That is one of the underlying things in connection with State insurance. We believe that if the State took over the insurance that would be one portion of their work,—the provision of proper medical appliances for the cure and treatment of industrial diseases and injuries of the workmen.<sup>1</sup>

The Committee were impressed 'with the evidence of numerous representatives of employers, and of Trade Unions and Insurance Companies, as to the necessity for a comprehensive system of medical and surgical services with a view to the rehabilitation of the injured workman and the restoration of his earning capacity'.<sup>2</sup> It drew attention to existing systems in America; the beneficial effects were beyond dispute. 'There appears to be no valid reason, apart from the question of expense, why adequate medical services should not be furnished.' It emphasized the possibility of co-operation with the National Health Scheme, 'any medical and surgical aid necessary in addition to the medical treatment already available under the National Health Insurance Acts to be provided for the injured workman at the cost of the employer under a comprehensive scheme worked out by the proposed Commissioner in co-operation with the Ministry of Health'.<sup>3</sup>

Services so to be superimposed upon those already available under National Health Insurance, as envisaged by the Committee, would have been, in particular, various special services: those of expert physicians and surgeons, massage, X-rays (for diagnosis as well as treatment), hydro-therapeutic and other kinds of treatment, not requiring residence of the patient in a hospital or other residential institution, in-patient hospital treatment, convalescent homes, and others. 'We cannot but think', the Committee added, 'that efficient treatment of this kind, having for its objects the saving of life, relieving suffering and restoring working capacity, is as important to workmen as monetary compensation for temporary loss of wages and ultimate diminution (if any) of working capacity, and from the point of view of the community a scheme towards this end is most desirable.' They also strongly advocated extension services of First Aid and Ambulance,<sup>4</sup> and the

<sup>1</sup> Cf. Q. 9700-2.

<sup>2</sup> Cf. *Report*, p. 49.

<sup>3</sup> *Ibid.*, p. 71.

<sup>4</sup> Provisions in regard to First Aid and Ambulance were already in force under the

training of disabled men. Voluntary and other hospitals are often willing to place all these services at the disposal of injured workmen and often make no charge for so doing. Some insurance companies contribute to hospitals; some make a contribution to the cost of surgical appliances; but, generally speaking, nothing has as yet (1938) been done to give effect to the strongly worded recommendations of the Holman Gregory Committee in the matter of medical treatment for injured persons. Compensation is given and injuries are assessed in cash only.

This fact is emphasized both by the Report of the British Medical Association Committee on Fractures, 1935, and the Interim Report of the Inter-Departmental Committee on the Rehabilitation of Persons injured by Accidents, 1937. We shall deal with this question at greater length in our second volume.

The English Workmen's Compensation law, as created in 1897 and 1906, and later supplemented by the National Health Insurance scheme, lags in this respect far behind Workmen's Compensation as developed by the majority of, and, indeed, the most important, industrial nations and several of the British Dominions.

General Regulations made under the Coal Mines Act, 1911; there were further provisions under the Special Rules made under the Metalliferous Mines and Quarries Acts. As regards factories and workshops, the Home Office had been empowered, since 1916, to make orders requiring provision of Ambulance and First Aid requirements. Similar provisions are embodied in the Factory Act of 1937, Sec. 45.

## CHAPTER X

### THE HOLMAN GREGORY REPORT ANALYSED

#### 3. ECONOMIC AND SOCIAL DEFECTS OF WORKMEN'S COMPENSATION

##### *B. Claims*

Life was never a May game for men; in all times the lot of the dumb millions born to toil was defaced with manifold sufferings, injustices, heavy burdens, avoidable and unavoidable; not play at all, but hard work, that made the sinews sore and the heart sore. . . . And yet I will venture to believe that in no time, since the beginnings of Society, was the lot of those same dumb millions of toilers so entirely unbearable as it is even in the days now passing over us. It is not to die, or even to die of hunger, that makes a man wretched; many men have died; all men must die—the last exit of all is in a Fire Chariot of Pain. But it is to live miserable, we know not why; to work sore and yet gain nothing; to be heart-worn, weary, yet isolated, unrelated, girt in with a cold universal *laissez-faire*; it is to die slowly all our life long, imprisoned in a deaf, dead Infinite Injustice, as in the accursed belly of a Phalaris' Bull! This is and remains for ever intolerable to all men whom God has made.

THOMAS CARLYLE, *Past and Present*, Chap. xiii, 'Democracy'.

FROM the moment of the accident or injury which brought disablement or death to a workman to the final settlement of his claim to compensation is generally a long, and sometimes a crooked, path, beset with almost as many dangers and temptations as Bunyan's Pilgrim encountered. The path is broad till it reaches the wicket-gate marked Claim, the keepers of which are men skilled in the law; it grows narrower and more tortuous till it ends at the portals called Settlement, which is manned by officers of justice. It may take the pilgrims a few months, or several years, to traverse the distance between the entrance gate of Claim and the exit of Settlement; the path is flanked by legal quagmires and judicial fences, guarded by predatory creatures which often deter men who have not a trustworthy guide from going farther on their journey, though their welfare and that of their family depends upon their reaching the other end.

The first step that the law requires is 'Notice of Accident' which, by the Act of 1906, had to be given by the injured person as soon as practicable after the occurrence of the accident or injury, and before the workman had voluntarily left the employment in which the injury occurred. This requirement could be waived upon proof that the employer had not been prejudiced or that the failure to give notice arose from a mistake of fact, absence from the United Kingdom, or other reasonable cause. It would seem at first sight to the inexpert layman that there could be hardly any dispute about the actual happen-

ing of an accident which, in most cases, others will have witnessed; but here, as elsewhere, the question has been complicated by exceptional cases. Employers have properly insisted that 'notice of accident' was indispensable both to protect them against unjustified claims and to ensure appropriate treatment of the injured workman. But the Holman Gregory Committee was satisfied<sup>1</sup> that existing provisions were a cause of hardship when, for instance, as often happens, a workman suffers a slight abrasion which later turns septic, or is ruptured without knowing it, or fails at the time to recognize the nature of his injury. To do justice to the injured workman and at the same time to give reasonable protection to the employer in such cases is a matter of real difficulty.

Judge Ruegg suggested<sup>2</sup> that the Act should be amended by omitting the words 'as soon as practicable'. He told the Committee that when consulted by those who drafted the Act of 1906 he had overlooked the possible importance of these words, and had failed to realize how they would be exploited by the representatives of employers. These words were inserted in order to increase the measure of protection enjoyed by an injured workman under the 1897 Act, but had in fact reduced it, whilst 'the construction that the Court of Appeal put upon these words was almost to deprive a man of any right under the Act at all'. At one time, he explained, the courts held that 'if any opportunity occurred after the accident when the workman could have given notice to the employer and he let the opportunity slip, his right was gone for ever'.<sup>3</sup> The Committee made the following recommendations:—

1. Notices to be exhibited conspicuously in all mines, quarries, factories, workshops, etc. informing the workmen of the necessity for notice of every accident to be given to a designated person, and to keep an accident book in which an entry should be made of all ascertained accidents.

2. The defence of wanton inaccuracy of notice should not be open to the employer where the accident is recorded in the said accident book, or when the workman establishes that the employer had other knowledge of the accident at or about the time of its occurrence, or until the employer establishes that the notices had been exhibited and the accident book kept or until he has established that he has been prejudiced in his defence by the want, defect, or inaccuracy of notice.

The Workmen's Compensation Commissioner would specify the establishments to come under this regulation. These practical recommendations did not, however, meet all the difficulties. Mr. Joseph

<sup>1</sup> Cf. p. 51.

<sup>2</sup> Q. 10205-16, 10299-306, and *passim*.

<sup>3</sup> The legal position is now (1938) no longer as unsatisfactory as here suggested, though the words in question are still in the Act. In *Albison v. Newroyd Mill* they were interpreted to mean 'so soon as a man realizes he has suffered an injury or accident entitling him to compensation'.

Wilson, an executive officer of the Amalgamated Society of Engineers, told the Committee that men sometimes failed to report an accident for fear of 'the sack'. Moreover, 'men object to writing out these things, and I have known men, who have made claims, find it difficult to retain their employment'.<sup>1</sup> Questioning Mr. Thomas Neill, J.P., the Chairman, Mr. Holman Gregory, remarked:<sup>2</sup> 'I quite agree with your suggestion that the man should give notice immediately, no matter how slight the scratch, but do you know that when men give notice of such accidents they are ridiculed?'.<sup>3</sup>

Q. 9925 (Mr. Holman Gregory). Another point raised this morning—not for the first time—is that workmen dread to give notice of accidents, many of which have serious results through not being reported, to the ultimate detriment of the worker.

A. My own experience confirms what you state, that there is considerable disinclination on the part of the workpeople to report what appears to be trivial accidents.

Q. 9926. Because they fear to offend their employer?

A. Because they fear the possible results of taking further action.

Mr. John Grieve, speaking for the Scottish Conference of Approved Societies, mentioned 'fear of losing his job' as preventing a workman in some cases 'from making application or sending in notice until he gets really bad'.<sup>4</sup> Upon this aspect the Committee was surprisingly silent. Ignoring all other motives, they dealt with the 'negligence' of the workman as synonymous with a lack of thought, carelessness, or incapacity to judge the full effect of certain accidents.

After the occurrence of the accident and the reporting of the injury the workman must next make his claim under the Workmen's Compensation or under the Employers' Liability Act or at Common Law, though these alternative possibilities exist to-day in only a small minority of cases.

In 1907 there were 583 cases taken to court under the Employers' Liability Act: by 1922 the figure had fallen to 35:<sup>5</sup> the average number from 1926 to 1935 was 31.<sup>6</sup> It should not, however, be assumed from these figures that the remedy at Common Law and the Employers' Liability Act had been ousted by the Workmen's Compensation Acts.

<sup>1</sup> Cf. Q. 4244 and 4247.

<sup>2</sup> Cf. Q. 8588.

<sup>3</sup> Mr. Francis Askew, Past President of the National Conference of Friendly Societies, ex-Lord Mayor of Hull, was of the same opinion. The existence of such fear was denied by Mr. Beale, Q. 9007, but again reaffirmed by the Chairman, Q. 9082, who mentioned a case within his own judicial experience.

<sup>4</sup> Cf. Q. 13241.

<sup>5</sup> Cf. *Statistics of Compensation for 1922-3*, p. 11.

<sup>6</sup> Cf. *ibid.*, 1935-7, p. 14.

The Committee held that 'the unpopularity of the Employers' Liability Act made it clear that it was along the lines of Workmen's Compensation rather than employers' liability that future legislation of this class must develop'. The Act of 1880 was notoriously 'very technical, and very difficult to succeed under' (see Chap. III), and some part of its unpopularity is ascribable to its defects; the spectre of the doctrine of common employment overshadows the common law.

The second remedy 'outside' Workmen's Compensation, viz. contracting-out, is likewise to-day of small importance. Mr. Joseph Chamberlain, who had been so right in many things concerning workmen's compensation, was mistaken in his belief that the retention of 'contracting-out' would enable 'exceptional employers' 'to make larger sacrifices than any that the legislature imposed as a matter of obligation'.<sup>2</sup> So soon as Parliament enacted that 'contracting-out' schemes should not be less favourable to the workmen than the terms of the Workmen's Compensation Acts such special private arrangements lost all attraction to employers.<sup>3</sup> Even these few schemes had in many cases proved defective, and the Holman Gregory Report included a recommendation for extended control by the Chief Registrar of Friendly Societies who under the Act of 1906 was only required to see that scales of compensation schemes submitted were as good as those of the Act. His scrutiny did not extend to the scheme as a whole, nor was he called upon to inquire as to the actual provision made to secure payment of benefits under the scheme. It might happen, as in a case of 1913, that a scheme had expired and the funds had been exhausted, and not only the applicant in that case but a number of widows and children found themselves without remedy. The workmen having contracted out, the employers were under no liability

<sup>1</sup> It should be remembered that the workman, under the 1906 Act, could not recover both damages and compensation. If he was unsuccessful in a claim for compensation, he could not bring action for damages; but should he be unsuccessful in an action for damages he could apply to the court in the same proceedings to assess compensation under the Workmen's Compensation Act. From this it should be evident that it was no 'risk' of losing compensation which might have deterred the injured workman to claim under Employers' Liability: but that it was, in all probability, the bad chance given to him under the Employers' Liability Act which prevented him from making use of this dubious remedy.

<sup>2</sup> *H.C. Debates*, July 6th 1897.

<sup>3</sup> Cf. Reports of the Chief Registrar of Friendly Societies.

Schemes certified under the Act of 1897:

| Year | Numbers | Members |
|------|---------|---------|
| 1900 | 46      | 123,000 |
| 1908 | 32      | 65,000  |
| 1918 | 20*     | 63,000  |
| 1936 | 11      | 47,932  |

\* Of which six in the mining industry, in which there are now (1938) none.

under Workmen's Compensation law. The Report urged that it should be a condition of all schemes that the employer should guarantee benefits under such schemes both during currency of the schemes *and after their expiry* to the satisfaction of the Workmen's Compensation Commissioner, to whose appointment to administer the whole scheme in future the Committee attached so great importance.<sup>1</sup>

These, then, were the exceptions relating to injured workmen or their families claiming compensation outside the Workmen's Compensation Act. What were the defects of and the reforms proposed in regard to the regular course of remedy under the Workmen's Compensation Act, 1906? Besides giving notice of the accident the workman was, and still is, required to claim compensation from his employer within six months of the injury. This is no technicality but a substantial protection for the employer. The incidental formalities are of the simplest; a claim need not be in writing<sup>2</sup> nor specify any definite amount. Even if not made within six months failure does not debar the injured workman from benefits if due to mistake, absence from the United Kingdom, or other reasonable cause.

The injured workman who has given notice of an accident has next to undergo a medical examination, by a duly qualified medical man provided and paid for by the employer. Should a workman refuse to submit to or in any way obstruct such examination, his right to compensation and to take or prosecute any proceeding under the Acts was and still is suspended pending the examination.<sup>3</sup> A workman may be required to submit, on reasonable grounds, to repeated examinations by the employer's or, in practice, the insurance office's doctor. Trade unions frequently arrange for their members to be examined also by another doctor not in the pay of the insurance office. Workmen may also require the presence of their own medical man during the examination by the insurance company's doctor—a point of importance with a view to possible future litigation.<sup>4</sup> The Holman Gregory Committee did not investigate this matter at all, although several witnesses had drawn attention thereto. Though the doctor is paid by the employer the workman was expected to incur the expenses of 'seeing' him.

<sup>1</sup> This is now done by the Chief Registrar of Friendly Societies under § 31 of the Act.

<sup>2</sup> Cf. Willis, *loc. cit.*, pp. 370–3. Any communication from which the employer can see that a demand is being made upon him to pay compensation in respect of an accident will amount to a sufficient claim. A conversation in which a man asked for the continuance of payments as he was in need of them, and threatened to go to a solicitor, to which the employer replied that the man need not do that as the matter could be settled without expense, was regarded as making a claim.

<sup>3</sup> For further particulars cf. *Regulations of the Secretary of State, June 28th 1907, as to Examinations of a Workman by a Medical Practitioner, &c.*

<sup>4</sup> Cf. Cohen, *loc. cit.*, pp. 114–15.

Mr. Frank Hall<sup>1</sup> knew 'cases where a doctor employed by an indemnity society has a whole district to look after; he will send a post-card to probably a dozen or twenty men; they meet him on a railway platform and he will examine them there'. The workman was expected to get to such places of examination at his own cost, although he might get the employer to pay if he refused to go otherwise, but there was and is no uniform regulation in the matter.<sup>2</sup>

The Committee doubtless regarded the cost involved as trivial: but the principle is of importance, and in many cases, for some types of injury and in some areas, the present position is undoubtedly oppressive.

Mr. William Shaw, Chairman of the Scottish Trade Union Congress, in a statement for the Committee in this connexion drew attention to the fact that doctors might be tempted to grant certificates based on conditions not existing at the time of examination, and demanded that this should be prohibited.<sup>3</sup>

When we go to the Court the insurance company submit a medical certificate, and a review of the case means a reduction of compensation to the workman. We object to that. We say the conditions of the workman at the same time should be taken into consideration. A Court of Arbitration of the nature I have tried to describe would take into consideration all the circumstances, and would not, as a matter of fact, countenance a doctor's evidence that was meant to convey, as it does at the present time, the fixing of a sum very much lower than the workman is entitled to simply because of the fact that he is likely to recover in three months.<sup>4</sup>

The problem is linked up with that of questions of settlement and possible disputes and, for this reason, deserved careful examination by the Committee, whose silence on this subject is surprising.

We turn now to a group of questions of most serious consequence to the injured workman and his dependants, viz. the review of weekly payments, commutation and redemption and, in particular, agreements for lump sums and compulsory redemption, and finally, solicitors' costs in connexion with the settlement. Here are a series of potential pitfalls which deserve close attention.

We have already mentioned one case (see p. 117) where workmen were liable to lose advantages under the law, i.e. where they had made agreements before a weekly payment had been made and it was held

<sup>1</sup> Cf. A. 2318.

<sup>2</sup> It was laid down in 1927 (*Richards v. United National Collieries*, [1927] W.N. 194; 20 B.W.C.C. 465; *Digest Supp.*) that an employer cannot be ordered to pay the travelling expenses of a workman as a condition precedent to his attendance for examination by a medical referee. It is not clear whether this applies to a first medical examination.

<sup>3</sup> Cf. A. 16.

<sup>4</sup> Cf. A. 128, cf. also A. 232-3.

by the courts that such agreements could not be recorded. The House of Lords decided against such a distinction and held that an agreement whereby the workman surrenders his right to weekly payments under the Act should be regarded as void.<sup>1</sup> Apart from this the general position under the 1906 Act was that there was no need for the parties to seek arbitration or a decision of the courts so long as the following points were covered by an agreement between themselves:

1. Liability to pay compensation.
2. Amount of compensation.
3. Duration of compensation.

Where all these matters were settled by agreement between the parties the court had no jurisdiction to entertain proceedings, but, if the workmen desired protection of the court, a memorandum of the agreement was to be recorded, as if the workman had obtained an award under the Act, and in like form. The importance to the workman of an agreement in this form was that it placed upon the employer the onus of showing a change of circumstances entitling him to reduce or terminate the weekly payment.<sup>2</sup> Insurance offices, acting for employers, had in fact frequently endeavoured to induce the injured workman to accept less than their legal dues. Thus the House of Lords decided in 1913 a case where the employers required the workman to sign a receipt for each weekly payment stating that 'further liability, if any, will be determined week by week when application is made'. This the workman refused to do, and required the employers to give an unqualified admission of continuing liability in accordance with the Act; being unable to obtain this he initiated arbitration proceedings.<sup>3</sup> There was another case in 1915 where the employer had offered an agreement during total incapacity only, which the workman likewise refused, and initiated arbitration proceedings.<sup>4</sup> It was made clear to the Committee that the general custom was not to register cases,<sup>5</sup> but Mr. Gallacher, speaking for a Scottish miners' union, gave as one reason for a non-

<sup>1</sup> Cf. Willis, p. 433.

<sup>2</sup> Cf. Ruegg and Stanes, p. 257.

<sup>3</sup> Cf. *Summerlee Iron Co. v. Freeland*, [1913] A.C. 221; 6 B.W.C.C. 255.

<sup>4</sup> *Cooper v. Wales*, [1915] 8 B.W.C.C. 595. As to further particulars cf. Ruegg and Stanes, pp. 258-60.

<sup>5</sup> Cf. A. 7553: 'If the whole of the cases were registered in the County Court the County Court could not possibly deal with them.' A. 7554: 'It is only in serious cases that we do register; either they register the agreement for a permanent weekly payment or the settlement that is to come.' Q. 7913-19. On the other hand it was contended that there were 'a considerable number of cases in which the agreement for the payment of a weekly sum is recorded', cf. Q. 10581. But the regular thing seems to have been that the whole procedure between the employer and the injured was more or less 'automatic': the man receives his first weekly payment, when it is due, he stays away until he is better, and returns to work; such cases might have been recorded or not, cf. A. 10580, also A. 10734.

general recording of agreements that 'the employers offered considerable opposition to the recording of memoranda, and made it nearly impossible'.<sup>1</sup> He added that the workman's interest did not suffer thereby as the recording could be deferred 'until a question arises', i.e. before the case becomes ripe for arbitration;<sup>2</sup> but, as His Honour Judge Sir Edward Bray explained to the Committee, 'even where the agreement ought to be recorded, the insurance companies frequently prefer to run the risk and refrain from an application to record it in order to avoid the interference of the judges', adding that 'this should be provided against so far as possible'.<sup>3</sup> The Holman Gregory Committee, relying upon the evidence of witnesses who declared that the 'present practice was quite good',<sup>4</sup> let the matter drop, being apparently satisfied that a general enforcement of registration of such agreements would put too great a strain on county courts.

The interest of the Holman Gregory Committee in claims and settlement began at a later stage: viz. with the so-called 'review of weekly payment' as a point at which many difficulties leading to arbitration and litigation were likely to arise. The Act of 1906 provided that any weekly payment might be reviewed<sup>5</sup> at the request of the employer or of the workman, and on such review may be ended, diminished, or increased, the amount of the payment in default of an agreement being settled by arbitration. This provision of the law led to obvious hardships; it had become the practice where weekly payments were made, but no agreement had been recorded, for an employer who claimed that the condition of a workman had altered to stop payment, leaving it to the workman to commence arbitration proceedings. Speaking of the consequent hardship to the injured party, Mr. G. M. Light, Registrar of the Whitechapel County Court, an experienced witness, said:

What I think is oppressive to the workman is that his weekly payment should be stopped, and it often happens that it is stopped for a week or two before the workman does anything. Somebody sends him to a solicitor and an application is made to the Registrar for leave to issue execution, and then the matter is referred to the Judge, and another fortnight elapses. In the meantime the workman has gone a month, perhaps, when the only change in his condition is one from total incapacity to partial incapacity, and the poor man has received nothing. If it is a case of complete recovery, of course, it is not such a strong case, but nevertheless it is the workman who has to force the employer's hand under existing practice.

It was agreed before the Committee that several months might well elapse until a decision by the county court would be made 'while the

<sup>1</sup> Cf. A. 10813.

<sup>2</sup> Cf. A. 10815.

<sup>3</sup> Cf. A. 15037.

<sup>4</sup> Cf. A. 21322.

<sup>5</sup> Schedule 1, clause 16.

man is getting nothing'.<sup>1</sup> Mr. Houghton, speaking for the Scottish Union of Dock Labourers, urged that doctors 'paid by the State' ought to be attached to the courts, and he referred in particular to the danger that injured workmen, whose weekly payments had been stopped, were driven, through the long period of pending decisions, to 'start something he is not fit for', a circumstance which might be used as evidence against him.

... one Sergeant Dalziel, had a case one day, and a doctor was speaking on behalf of the employer, but on the next day he had another case, and found that he was an assessor of the Court. You are not going to tell me that a man receiving £2,000 or £3,000 a year from the employers is going to give an unbiassed opinion. The consequence is that if a man like him comes and examines the workman, and decides whether his compensation should be stopped at a particular time, the odds are all against him.<sup>2</sup>

The Committee recommended that weekly payments should continue until varied or ended by an order of the arbitrator; but it reduced this concession by adding that 'where a difference arises as to the workman's fitness for work, power should be given to the Registrar of the County Court, upon the employer's *ex parte* application, to make an interim order reducing or suspending the weekly payment pending the issue being dealt with by the arbitrator'—and even this proposal was strongly opposed by Mr. Reginald Guthrie, who represented employers' interests on the Committee.

The position of the injured workman who is fit to undertake light work became a matter of importance in this connexion. It was represented to the Committee that the workman's right to compensation, if work was not available, was not clearly defined, and that the conception of his position under the provisions of the Act differed in various county court districts. It was urged that the county court judges should not have power to make an order reducing the amount of compensation until the employer had satisfied him that light work was in fact available to the workman. The Committee recommended alterations of the Act in this respect, of which the most important was that 'where an application is made by an employer for a reduction of the weekly payment, the onus should rest upon him of establishing that work of a description which would justify the reduction of the compensation is normally available in the district'.<sup>3</sup>

There remained in this pre-arbitration phase of settlement a most important and still unsolved matter which, as we have seen, occupied the attention of the 1903 Committee, viz. the question of a lump-sum payment in lieu of weekly payments, or, in legal parlance, of commuta-

<sup>1</sup> Cf. Q. and A. 18205, cf. also Index to vol. ii under 'Stoppage of weekly payment'.

<sup>2</sup> Cf. A. 286.

<sup>3</sup> Cf. p. 52.

tion and redemption. We have seen in Chapters IV and V how complaints about the disadvantages of lump-sum settlements to workmen were brought forward by impartial and authoritative witnesses before the Committee of 1903. We have seen how reluctantly and half-heartedly it dealt with these complaints and apparent evils and how the Act of 1906 tried to improve the situation to the injured workman by providing as a deterrent against non-registration of such agreements that the employer should not be exempted by such agreement from liability to continue the weekly payment. On the other hand, the registrar was empowered to refuse registration of such lump-sum agreements on account of the inadequacy of the payment—not to be confounded with compulsory redemption of weekly payments, with which we shall deal later. It was believed that existing safeguards sufficed to protect the injured workman.

The Holman Gregory Committee were at pains to ascertain how far this 'preventive' arrangement had worked and took much evidence on the point. Though very divergent views had been expressed the Committee were unable to recommend the prohibition of lump-sum settlements.<sup>1</sup> Those in favour of the prohibition of lump-sum settlements based their arguments upon the frequency of cases where the lump sum had been squandered and the workman left in distress and want. But it was also argued that if there were no lump-sum settlements the workman would be encouraged to make a quick recovery. On the other hand 'cogent arguments setting forth the desirability of settling weekly payments by a lump sum were presented from various sources'. Employers wished to preserve the power of redemption 'because for business purposes it is desirable from their point of view finally to determine the liability' and regarded lump-sum settlements as eminently desirable in neurotic and neurasthenic cases. So also said His Honour Sir E. Bray:<sup>2</sup> 'There is no doubt that once the thing is settled by the payment of a lump sum, somehow the man gets better'—and as we shall see a little later his views were in no way biased against the workmen. Moreover, 'lump sum settlements are popular with workmen'.<sup>3</sup>

We have recapitulated above the arguments set forth in the Report, but a careful study of the evidence constrains us to emphasize that they do not constitute by any means a complete statement of the case as actually represented to the Committee. Accepting the fact that lump sums are often squandered, it should have been the task of the Committee to investigate typical cases in which lump-sum settlements respectively fulfilled or failed to fulfil their purpose. The Committee

<sup>1</sup> Report, p. 53.

<sup>2</sup> Cf. A. 15200.

<sup>3</sup> Cf. A. 8145. Mr. Baird: 'You will do one of the most unpopular acts if you abolish lump sums.'

might have set themselves to devise precautions against failure. If their investigations led them to the conclusion that no effective precaution could be devised they might have decided against commutation of more than, let us say, half the weekly payment, and that subject to proper inquiry, as is the practice with military and naval pensions.

To make such an investigation is a task beyond the present writers, but we shall later deal with the question at length in the light of evidence tendered to the Holman Gregory Committee and of subsequent experience. What concerns us at this point in our historical survey is their attitude of mind which has so greatly influenced the subsequent course of legislation. They stated that employers or insurance offices favoured commutation and redemption because they desired a final determination of their liability. Was that the only and most efficient motive of the employers and the insurance offices in this matter? The Committee of 1903 heard much evidence (see Chap. IV) as to the pressure brought to bear by insurance companies and their agents upon the injured workmen to accept lump-sum settlements. Sir Kenelm Digby sitting as Chairman of that Committee himself mentioned a case of a widow who was alleged to have been 'bullied' into accepting £50 for an award worth a great deal more. The Holman Gregory Committee produced a hypothetical case of £50 to illustrate the possible advantage of such a settlement to the workman, when the insurance company '*without unfairness to the workman*' would say: 'We dispute the claim, but it will cost us £50 to fight it. We will therefore pay you £50 to settle the matter.' The Committee might usefully have analysed the significance of the words we have italicized, and they might have found that the danger of bullying and pressure was as real in 1922 as it had been in 1904, and that the true motive for these settlements was less to determine liability than to evade it.

An authoritative witness declared:<sup>1</sup>

In cases where the workman has no particular union behind him, the bargaining propensity on the part of the insurance people is very strong, and, in my opinion, men frequently suffer in consequence of the absence of any advice which they can obtain from any source whatever.

He described what used to happen when bargaining about lump sums was at stake:<sup>2</sup>

Propositions are made to the man: 'Now look here, we will settle with you for a lump sum; if we give you £50 will you sign an agreement; we do not want to be bothered with these weekly payments.' That is something I would entirely object to. The man will write to us asking if it is a fair offer. Of course it depends on the

<sup>1</sup> Mr. S. Chorlton, General Secretary of the National Union of Railwaymen. A. 2528.

<sup>2</sup> Cf. A. 2712.

circumstances. If I advise him to do so he will inform the insurance company, or he may have referred the insurance company to me and I tell them: 'No, we cannot settle for that.' Then they say: 'Will you make it £75?' 'No.' 'Will you take £100?' 'No, I am not going to settle at all: you must give the man his weekly compensation.' 'Look here, we will give you £120.' That may be a fair offer, but it is a speculation. All lump sum settlements are speculations in connection with the Compensation Act.

This is a distressing, indeed a revolting picture. It is, so to speak, against all social decencies to make injuries a case of such kind of 'bargaining', it shows us whither 'freedom of contract' between parties of unequal strength must lead. Immanuel Kant once said: '*Jedes Ding hat seinen Wert, nur der Mensch hat Würde*', 'Each thing has its value, men alone have dignity.' This kind of bargaining, in the name of 'freedom of contract', for compensation which accrues to an injured man by Statute is offensive to any right conception of human dignity. It seems to us intolerable that it should be practised upon the humbler sort of men, victims of the worst fate. But not all members of the Committee took this view.<sup>1</sup> Mr. Guthrie, representing Employers, could see no objection to it, and even suggested that the witness had used the word 'bargaining' in an offensive sense (!) which the witness modestly disclaimed.

A trade conducted on such lines may be properly described as 'offensive'. Mr. Chorlton had envisaged a case where the man had his union behind him, but he asserted that non-unionist workers 'settled for small sums altogether disproportionate to what they ought to have received'.<sup>2</sup> Mr. Houghton of the Scottish Union of Dock Labourers took the same line:<sup>3</sup>

I want indiscriminate negotiation done away with where the employer or the insurance company can give a man a lump sum constituting probably about six weeks' payment at 25s., and the man is forced to take it. . . . Take our own case of the dock labourer and the 14 days' limit; most casual labourers have to live from one day to another. In about three or four weeks' time, if he is able to work at all, necessity compels him to look to see if he can get a settlement. My advice to these men every time they come to see me is: 'Keep on with your compensation until your doctor says you are fit for work', but he finds the greatest difficulty in trying to live on 25s. especially if he has a wife and family, and the consequence is he takes a lump sum covering probably six weeks' payments, and as matter of fact he probably will not be well for six months, but he has taken it, forced to do it by the

<sup>1</sup> To the credit of the Committee it should, however, be added that Mr. Guthrie stood apparently alone with his views in this matter, as the Chairman at the very outset of the hearing left no doubt of his view (Q. 412) 'that there are very serious complaints made against insurance companies about the amounts they pay to workmen in lump sum settlements'.

<sup>2</sup> Cf. Q. 2715-16 and 2713.

<sup>3</sup> Cf. A. 335.

economic circumstances. Personally I should like to prevent such a bargain being allowed to be undertaken by all insurance companies, in the interests of the man himself.

Mr. Shaw, Chairman of the Scottish Trades Union Congress, quoted the case of a man whom the insurance company first tried 'to starve into accepting a small sum of money'. He was offered £80, but was awarded £285. The 'tactics of the insurance companies' were constantly coming to his notice. 'Their representatives are very keen to do business . . . they simply want to get quit of the liability as quickly as possible'.<sup>1</sup> Nor did the representatives of workers and unions alone speak thus. His Honour Judge Ruegg, K.C., confirmed almost word for word what had been said by them:<sup>2</sup>

Of course there are various insurance companies which are always anxious, properly anxious perhaps, to get rid of their liabilities, and they always try to make settlements for small sums—sometimes large and sometimes small. There is always some pressure—I will not say illegitimate pressure, but pressure brought upon the workmen who are receiving compensation to settle for lump sums. Very often the workmen are legally advised, or advised by their Trade Unions; sometimes, of course, they have not any advice, and these are the cases in which one finds the amount, in our opinion, is very inadequate; sometimes quite inadequate.

In the absence of legal advice the danger of inadequate and indeed 'unfair' lump-sum settlements became apparent. Mr. John W. Ogden, J.P., speaking on behalf of the Amalgamated Weavers' Association of Accrington,<sup>3</sup> claimed that injured workmen were prone to accept proposals made to them through sheer fear or dislike of legal proceedings.

The operatives do not want to have trouble with the employer; they do not want to fight the case in court; they may have to work for this employer. They do not want to fight the case keenly, and many times we are induced to settle cases which we should not do.

'We do not want to spend too much money,' he continued, citing a particular case,<sup>4</sup> 'we might have failed and we felt we might as well give the girl something for herself as spend money on lawyers.' Cases of almost unbelievable cruelty were mentioned. So Mr. Edward Judson, J.P., speaking for the Association of Operative Cotton Spinners, mentioned a case to the Committee<sup>5</sup> where a man whose arm was smashed was at first offered by the company £5 as a settlement, while he was still in hospital; after hearing from his legal representative the company offered £375 rather than let it go into court. 'We have had similar experience with other people . . . they send men along to

<sup>1</sup> Cf. A. 22-3.

<sup>2</sup> Cf. A. 10173.

<sup>3</sup> Cf. A. 11468.

<sup>4</sup> Cf. A. 11476.

<sup>5</sup> Cf. Q. 12038-42.

these people and offer them £5, £10, £15, and £20. They have not seen so much money before, and the company effects a settlement before we know anything about it.' The person who in the first-mentioned case had offered the £5 had been a 'Claim Inspector from a reputable company'. This is another and, we believe, a truer view of the 'bargaining' which a representative of employers presented as fair and inoffensive. The same complaints had been made before other Committees fifteen years earlier: the system was the same, the financial relation between the parties was the same: nothing had changed. What of the Registrar? Was he not a safeguard? At a very early date (see p. 68) when the administration of Workmen's Compensation was still in its infancy the method of requiring registrars to be arbiters of the fairness of settlements was widely criticized as a task for which they were unequipped.

The Holman Gregory Committee affirmed such apprehensions. The difficulty of arriving at a fair judgement of the extent and significance of the injury is a highly complicated matter. 'Each case must be treated on its merits . . . it is difficult to lay down a hard and fast rule', declared a witness when asked about lump-sum settlements which came before the registrar of the county court, who was there 'for the purpose of protecting the worker as to the adequacy of payment'.<sup>1</sup> The evidence of Miss Susan Lawrence, secretary of the Working Women's Legal Advice Bureau which did the whole of the compensation work for the National Federation of Women Workers, was illuminating:

Q. 826 (Mr. Holman Gregory). How many do you think you have altogether?

A. Of cases of inadequate pay?

Q. 827. Yes.

A. I think in almost every case that comes into one's hands too little is offered at first.

Q. 828. It is the preliminary offer that is objected to. But you get enough as a rule, do you not?

A. Yes, we do; but the unaided worker does not.

Q. 829. These sums have to be registered.

A. Yes.

Q. 830. So eventually they get a reasonable sum?

A. No, I do not think you can trust the Registrar.

Q. 831. Would you trust the Judge himself? Because, of course, these cases can be taken to the Judge past the Registrar?

A. The Registrars do seem to register some very poor settlements.

Q. 832. You can take evidence to the Judge, can you not?

A. If we have the matter in hand, it is all right, we can look after it, but I am talking of cases going to the Registrar alone; some Registrars are very careful, but some are not.

<sup>1</sup> Cf. Q. 411-13.

A witness giving evidence as regards the position in Scotland made it clear that the conditions were still less satisfactory than in England. 'If he (the Sheriff Substitute) has no information upon which he can find it inadequate he cannot find it inadequate', said the witness, a solicitor of Glasgow, adding, to the apparent surprise of the questioner, that he had never had a case where the registrar had attempted to get such information on his own initiative by 'sending for the man'.<sup>1</sup> That in England, at least, much closer scrutiny was exercised by some Registrars was explained by Mr. A. L. Lowe, one of the Registrars of the Birmingham County Court, who stated that the Deputy-Registrar or at least one of his clerks was sure to see the man.<sup>2</sup>

Another witness, giving evidence for the Sheriffs Substitute of Scotland (who are equivalent to Registrars in England), averred that in view of the little information they got about the details of lump-sum agreements to be recorded 'it must just be mere speculation'. He further agreed that his 'scrutiny' was 'largely perfunctory' in the absence of information upon which he could form an opinion.<sup>3</sup> 'If the man does not object to the recording of the Memorandum, unless there is something on the face of the Memorandum that arouses suspicion, he will naturally just allow it to be recorded.'<sup>4</sup>

These, then, were the so-called safeguards to protect the workman against exploitation of his ignorance, his urgent needs, and other circumstances pressing upon him to make a speedy and early settlement. In fact, in comparing the extracts we have given of the evidence of 1920 with the revelations of the 1903 Committee as well as of the Farrer Committee in this matter (see p. 129), we find that nothing in these conditions had changed at all! The evils had remained exactly the same. A scrutiny of the evidence further reveals the fact that the Holman Gregory Report, in giving the reasons for and against lump-sum settlements, ignored the main point. It tried to represent the endeavours of the employers and their insurance offices to effect a lump-sum settlement as due merely to a desire to determine their liability—as though there were any actuarial difficulty in estimating the 'value' of continuing weekly payments—whereas a motive, at least as strong but not mentioned by the Committee, was to save money by reducing the amount of their commitments. There is no reason to assume that this motive was less strong in the case of mutual associations than of insurance companies. Although their attitude in regard to the matter of 'bargaining' was not expressly investigated by the Committee, it was stated in evidence that they were just as keen to get

<sup>1</sup> Cf. Q. 8402-4.

<sup>3</sup> Cf. Q. 21132-7.

<sup>2</sup> Cf. Q. 9389-93.

<sup>4</sup> Cf. Q. 21140.

an early lump-sum settlement.<sup>1</sup> Injured workmen undoubtedly favour lump-sum settlements on the assumption that such a settlement will be fair and adequate.

Why then did the Committee thus defend lump-sum settlements on general grounds when it was evident that the prerequisite condition was so badly fulfilled? 'Freedom of contract' and the virtues of 'bargaining' had no place in such negotiations, as one party was constantly driven into accepting unfair offers by pecuniary need, by ignorance of the legal rights, or by fear of litigation and loss of employment. In the words of Mr. A. L. Lowe, representing the Association of County Court Registrars, to the Home Secretary and the Minister of Labour:<sup>2</sup>

... a workman cannot be considered to be negotiating on equal terms with the experienced agent whom, in general, he meets. He is often ignorant of his rights under the Act, often imprudent, and deficient in foresight, and the offer of a sum in cash, perhaps large in comparison with those he is in the habit of handling, though bearing no reasonable relation to the loss of earning power occasioned by the accident, is a temptation which he is frequently unable to resist.

These words (not quoted in the Holman Gregory Report), accompanied by a renewed assertion that members of the Association had personal knowledge of cases 'occurring almost daily' where workmen had accepted inadequate sums for the cancellation of their rights, ought fully to convince any disinterested student of the matter that effective 'bargaining' does not and cannot exist in the settlement of claims between parties so unequally placed.

The Committee apparently wanted to avoid discussion on this subject but, in the face of overwhelming evidence, felt obliged to advise fresh safeguards. On the other hand, the Committee quoted the view of His Honour Sir Edward Bray, confirmed by Mr. Shennan, the Sheriff Substitute of Lanarkshire, that 'all the Judges were strongly of the opinion that any lump sum agreement in satisfaction of the liability to make weekly payment under the Act should be invalid unless recorded, and should not be recorded unless approved by a Registrar or Judge'. The Report also referred to the statement of Mr. W. E. Gray, who, giving evidence on behalf of the Employers' Liability Assurance

<sup>1</sup> Presumably for the same reasons. Cf. evidence of Mr. H. E. Fray, Chairman of a mutual indemnity society:

A. 5191: 'In every case we start off by paying a weekly payment. Then, after the case has been on for some time, and it becomes a more or less permanent case, it comes up for review, and we try to settle for a lump sum payment. Sometimes we are able to settle; sometimes the man refuses.'

Q. 5192: 'Who carries out the negotiations for the colliery company?'

A. 'Probably the manager of the colliery, or the agent.'

Cf. also Q. 6233-6 and 6256.

<sup>2</sup> Cf. Holman Gregory Report, p. 365, vol. i.

Corporation, said that insurance companies would prefer that all agreements should be approved by the Registrar and denied that agents of insurance companies took advantage of the injured workman—a contention not accepted by Mr. Fred Hall, M.P., who retorted: 'You may take it from me it is a fact. I shall be able to prove it and bring the agents too.'<sup>1</sup>

The Committee, in these circumstances, felt bound to reconsider its former attitude in relation to the review of weekly payments. It recommended that lump-sum settlements should be permitted, as before, provided that every agreement by a worker with his employer to accept a lump sum in satisfaction of liability under the Act should be subject to the approval of the County Court Registrar, who should have power to refuse to record the agreement on any grounds he considered sufficient, and to refer the same to the judge. The Committee noted what had been said as to the inadequate powers of registrars, who, in their view, should hereafter be entitled to require production of medical reports and to refer them, when conflicting, to a medical referee for an independent Report; they should further be entitled to require the attendance before them of the parties to the agreement and to postpone registration, subject to appeal to the judge, in cases where no definite view could be formed of the man's prospects of recovery or for other reasons. The workman's Approved Society was to be informed of such pending agreements and might be called to appear as a party in the matter. The redemption of weekly compensation by payment of a lump sum was not to remain an absolute right of the employer, but a matter for the discretion of the arbitrator. In the case of workmen under twenty-one years of age compulsory settlement was to be prohibited.<sup>2</sup> The Committee were well aware 'that

<sup>1</sup> Cf. Q. 18032-8. An interesting passage on the evidence given by Mr. W. E. Gray was the following (A. 17919): 'No reputable company would desire its representative in any district to do the slightest thing in the way of taking advantage of an injured man: but I am not going to defend all the actions that have been done by people in remote places; you cannot keep your eye upon them all; and whatever your desire may be you have the human nature to deal with. A man wants to appear particularly smart and that kind of thing and he does what is not approved of by his head office when the thing eventually arrives there, but it is done.'

This statement reminds the authors of this book very much of what they have recorded as regards insurance agents employed in industrial assurance. The offices while not at pains to devise measures to stop undesirable practices wash their hands in innocence by declaring that they have no knowledge of it and strongly deprecate it.

<sup>2</sup> Where weekly payments have been made the employer was entitled—and is still—at the expiration of six months to redeem weekly payments. In cases where the incapacity is permanent the amount is determined under Section 17 of the First Schedule of the Act of 1906 on an annuity basis, but where the incapacity is only temporary the amount is fixed by arbitration.

practically the whole of the witnesses who gave evidence on behalf of the workmen' had demanded that the workmen should have the same right to demand redemption as the employer, but accepted the view of the employers, who argued that as they had to pay the compensation it 'should rest with them to say whether or not it should take the form of a lump sum or should continue as a weekly payment'. They further contended that a number of demands for redemption 'might embarrass the employer, especially if the benefits were largely increased'.<sup>1</sup>

It might, however, have been appropriate to draw attention to the fact that compensation is paid by employers not as a voluntary act of charity but in pursuance of statutory obligations, the right to demand fulfilment of which rests with the injured man. Reference might with equal advantage have been made to certain proposals of the Farrer Committee, and particularly of Mr. Bannatyne, as to facilities for combining lump-sum payments and annuities, a form of insurance which insurance companies have long offered to individuals upon a sound actuarial basis. The Committee was of the opinion that the workman's grievance could in the main be met if the employer's right to redeem should remain, subject only to the discretion of the arbitrator, and recommended accordingly.

Lastly they advised revision of the incidence of solicitors' costs. It might happen under existing conditions that the injured workman was not even aware of what these costs were even if they should have been specified; he might simply be told: 'We have agreed to settle the case for £60 and "agreed costs"' when the employer had paid for compensation and costs the sum of £100 in settlement of the claim. The evidence disclosed conditions which made action imperative. Sir Alexander Gibb, representing a well-known firm of contractors, declared that his firm had many complaints from workmen that their compensation payments had been practically swallowed up by legal men.<sup>2</sup> The evidence of His Honour Judge Ruegg was, as usual, illuminating. He pointed out that two kinds of legal costs had to be distinguished: first those paid by the employer to the workman's solicitor on a settlement (it had been 'an absolute scandal' on the part of the insurance companies to have given the solicitors 'unreasonable costs', and this habit was widespread and not confined to a certain inferior class of solicitors); secondly, costs deducted from the compensation by the workman's own solicitors for effecting a settlement. Here, replying to Mr. Bannatyne, His Honour said:

In many cases I have found what I have considered to be a quite unreasonable

<sup>1</sup> Cf. *Report*, p. 56. The Committee made no comment on this reflection upon the financial standing of insurance offices and mutual associations.

<sup>2</sup> Cf. Q. and A. 1795-6.

sum deducted for costs when really there has been no fight, just writing a few letters and bringing about a settlement for a lump sum, as much as . . . seven guineas.<sup>1</sup>

Sir Alexander Gibb further declared that a great deal of trouble was caused by men being badly advised by 'certain solicitors' who had touts or agents stationed about the lodging-houses in the district where the workmen resided. These solicitors were only too willing to take up any case of speculation, and many instances were brought to the notice of his officials of men, 'who, getting lump sum settlements for a legitimate case, had practically all the money swallowed up in legal fees'.<sup>2</sup> Yet Mr. Stuart-Bunning, speaking as Chairman of the Parliamentary Committee of the Trades Union Congress, asked whether something should be done to cut down solicitors' fees, e.g. by introducing some scale of graduated costs, replied:

I do not think we want to deprive the lawyers of any money. . . . It is rather difficult for a trade unionist to start cutting down the wages of other people.<sup>3</sup>

An analysis of this observation is beyond the scope of this work. The Committee recommended that power be given to the Registrars to review costs payable to solicitors for injured workmen, and that such should be recorded in agreements for lump sums. It is clearly necessary to ensure that solicitors' fees should be on a sufficient scale, lest the best firms should refuse to undertake the work, which, if it is to be well done, requires much time. In general they certainly do their work well. On the other hand, as the intention of the Act is to have recorded in court a memorandum of every matter decided thereunder, registration of all agreements should certainly be compulsory. An agreement in redemption of weekly payments under § 25 does not exempt employers from liability, yet it can, if recorded, be enforced as a County Court judgement, i.e. by execution or judgement summons.

<sup>1</sup> Cf. Q. 10267-73.

<sup>2</sup> Cf. A. 1680; and about 'touts' A. 1706-10.

<sup>3</sup> Cf. A. 126-63.

## CHAPTER XI

### THE HOLMAN GREGORY REPORT ANALYSED

#### 3. ECONOMIC AND SOCIAL DEFECTS OF WORKMEN'S COMPENSATION

##### C. Settlements

Nescis quam meticulosa res sit ire ad judicem.

PLAUTUS, *Mostellaria*, l. 1101.

WE will now ask our readers to follow us to the last stage of the road from the moment of injury until the final settlement of compensation, namely to the legal or judicial settlement of disputes. We are anxious not to overstress the social significance of this process. We have no right to assume that every case settled without reference to the courts represents a claim met to the mutual satisfaction of both parties, or one met by payment in full of sums legally due, or to draw favourable conclusions as to the satisfactory state of Workmen's Compensation from a 'relatively' small number of legal settlements of disputes. We have shown how many considerations deter the workman from resorting to the law, particularly if, like the great majority of working men, women, and young persons, he does not belong to a Trade Union. We have seen that even the simple act of registration of agreements is avoided if possible. We have described at length how 'settlements' are accepted which would not have been agreed to by the workman but for his ignorance of the law and his rights, the fear of the effects of disputes upon his further employment, and his urgent need to get some cash as soon as possible. As the poet Cowper put it in the first two lines of his well-known hymn (*A. & M.* 246):

What various hindrances we meet  
In coming to the Mercy-seat.

We conclude that no figures of settlements arrived at before the courts can reflect the actual conditions, so far as they relate to the possible claims of the workmen or their dependants, and to the legal dues to which injured workmen are entitled by Statute. Such figures may, on the contrary, give a very misleading picture of the actual position, so far as it is due not to a theoretical gap in the law, but to economic and social circumstances as mentioned above.

When the Holman Gregory Report was issued in 1922 the total number of cases under the Workmen's Compensation Acts taken into court in Great Britain in that year was 5,343. Many of these, however, were applications for dealing with allowances already granted

and many were settled out of court or otherwise disposed of, so that the total number of original claims for compensation finally settled with the cognizance of the courts was only 3,042. In 2,384 cases, or 78 per cent., the decision was in favour of the applicant. There were 25,580 cases in which memoranda of agreements and informal arbitration were registered in the courts. Appeals to higher courts (see App. II) totalled 72. Cases under the Employers' Liability Act, 1880, had decreased to 35 for Great Britain. Applications for arbitration had dropped from 8,798 in 1914 to 5,343 in 1922 compared with 5,288 in 1936.<sup>1</sup>

The settlement of disputes had been regulated by Section 1 (3) of the Act of 1906, by which disputes arising in any proceedings under the Act as to the liability to pay compensation, or as to the amount or the duration of compensation, if not settled by agreement, should be settled by arbitration, the same procedure applying to questions in respect of sub-contracting, negligence, review, and redemption. In accordance with the second Schedule of the Act the arbitration tribunal was to be:

1. A Committee representative of employers and workmen; or
2. A single arbitrator agreed upon by the parties; or
3. The County Court Judge; or
4. In England only, a single arbitrator appointed by the County Court Judge with the authority of the Lord Chancellor.

Single arbitrators were practically never called upon; arbitration by committees, by which social reformers set so much store, had not proved of practical importance;<sup>2</sup> the requisite mutual confidence and co-operation between employers and workmen was generally lacking, and it was only in the coal-mining industry in Durham and Northumberland that Committees were established. The County Court became in practice the usual tribunal.<sup>3</sup>

The Holman Gregory Committee expressed satisfaction with the working of these courts 'as a tribunal', but emphasized in their Report that the formality which is a necessary and important feature of the administration of justice in the law courts caused delay and considerable expense to the parties. A vivid and impressive picture of the task laid upon the judges and of their proceedings was given to the

<sup>1</sup> For figures cf. *Statistics of Compensation during the year 1922*, pp. 10-11, and *during the year 1936*, p. 13.

<sup>2</sup> Sir W. M. Ridley, the Home Secretary, when introducing the 1897 Bill had expressly remarked: 'Our hope with regard to arbitration is that committees will be established between employers and men to settle this question.' *Debates, H.C.*, May 3rd 1897.

<sup>3</sup> Cf. *Report*, p. 57.

Committee by His Honour Judge Ruegg,<sup>1</sup> in terms which deserve reproduction in full.

I get daily men coming before me saying: 'Well, we have settled this case for £50, and we have brought the doctor' and the doctor says: 'I think the man is going on very well, and I should hope in two or three months he should be all right.' That is the sort of evidence we have. When he is asked: 'Can you say when he will be all right?' 'No, I cannot.' Very often the man's doctor may be called and he says: 'I think the effects of this accident are likely to continue for a very long time, but I do not know; no one can say.'

It is very difficult to approve a settlement in those circumstances. In my own case I continually postpone it. It may be the right sum, or it may be not; it is impossible for me to say now whether it is, and I postpone it for longer than that, six months in some cases. I say: 'You must go on paying compensation; by that time we shall probably be able to see whether it is a reasonable sum for which the man ought to settle.'

Such a statement, from an authority of unquestioned eminence, should suffice to show the inherent defects and pitfalls of the whole legal machinery of Workmen's Compensation legislation in England. But the Holman Gregory Committee carefully avoided a critical discussion of problems which obviously had their root not in the inefficiency of judges, who were fully aware of their responsibilities towards the two parties, but in the system itself. The evidence of Judge Ruegg clearly showed the inherent difficulties and latent dangers of a system of Workmen's Compensation which tried to make use of the traditional legal machinery for a purpose so alien to legal administration. He gave an excellent example of what a Judge should find out in disputes about settlements. But he was an outstanding authority and it could not be assumed that his watchful carefulness was matched by that of all his colleagues. There was, in contrast to conditions in the U.S.A., where Accident Boards were regulated by a head office, no uniformity in the administration of Workmen's Compensation in Great Britain. In England alone the business was conducted by some 56 county court judges and 250 registrars, a fact which has not escaped the critical attention of American writers.<sup>2</sup> The Committee noted that terms of settlement that would be passed by one County Court Judge would not necessarily meet with the approval of another, and that the same facts might produce varying awards according to the angle from which they were regarded by different Judges, and that agreements that pass one Registrar were rejected by others. This is no new feature of jurisprudence or of any other branch of human affairs: it is notoriously present in jury cases, but there is no branch of law in which the consequences to the injured party are so serious. In such circumstances it is not surprising that injured work-

<sup>1</sup> Cf. A. 10179.

<sup>2</sup> Cf. Walter F. Dodd, loc. cit., p. 69.

men should be reluctant to enter upon litigation and should be tempted by representatives of employers or insurance bodies to come to a speedy, though probably inadequate, settlement outside the courts.

The Holman Gregory Committee, though apparently well aware of this state of conditions, did not venture to propose any drastic and fundamental changes in the matter. It refrained from making any definite recommendation:<sup>1</sup>

in view of the post-war conditions and of the fact that no urgent reasons for a change were pressed upon us.

We have quoted sufficiently from the abundant testimony of representative judges and registrars as to the need for drastic changes to demonstrate that the Committee's view of what constituted 'urgent reasons' arose from their own preconceptions. The reference to 'post-war conditions' is obscure—even meaningless. They were content to suggest 'improvements' of the existing system. Again the proposed Commissioner was drawn in; he might nominate District Commissioners acting possibly as advisors and conciliators, and

where necessary deal with disputed cases with less formality and, consequently, less delay and expense than exist to-day.<sup>2</sup>

They recommended that county court judges should institute periodical official conferences. County court registrars were to have their duties extended in various ways. They should give information, free to the injured workmen; they should, on the request of the parties, act as mediators between them and take steps to bring the parties to an agreement and should be empowered, in the event of a dispute, and with the assent of the parties, to refer the matter to the medical referee, whose certificate was to be final. A careful perusal of the evidence, in the light of the experience of the past fifteen years, suggests that the better course would be to replace county courts, whose routine was designed for very different purposes, by *ad hoc* bodies created for the exclusive purpose of administering Workmen's Compensation law, staffed by persons with legal qualifications and experience, and presided over by men who would command as much confidence as county court judges and registrars unquestionably enjoy.

<sup>1</sup> Cf. also Q. 9913. Here Mr. Francis Askew, J.P., formerly Lord Mayor of Hull, gave a case where a judge in the first instance decided against the injured workman; the case, by the assistance of a friendly society, was brought before the High Court which referred the case back to the County Court. After a lengthy hearing the judge then gave a verdict in favour of the claimant. The costs of this were £800—£900! The friendly society alone incurred an expense of £100: '... that is a case in point in which were it not for the Society helping the man to litigate, and take his claim elsewhere, the claim, which appeared quite a just one, would never have been met.' See also Chapter VII, p. 143.

<sup>2</sup> Cf. *Report*, p. 58.

The last matter connected with disputes and settlement which came under the consideration of the Holman Gregory Report was that of medical referees. We have just seen what paramount influence the medical verdict may exercise upon the final judgement. Under Section 16 of the 1906 Act medical referees, in the majority of cases specially attached to certain courts on the circuit to which they are designated, are appointed by the Home Secretary. At the time of the publication of the Report their number was over 300, consisting partly of consultants, partly of general practitioners, and also of specialists for particular classes of cases (industrial diseases such as dermatitis and ophthalmic cases). Even the busiest of them were part-time officers. We shall have to go fully into the whole aspect of the medical side of workmen's compensation in dealing with present-day conditions; it suffices here to state that the Holman Gregory Committee expressed the opinion that sufficient use was not made of medical referees. The disadvantage of the lack of administrative uniformity in the matter was again evident. In some circuits it was the practice of the county court judge to summon the medical referee to sit with him as an assessor in cases involving medical issues; in other circuits the referee was rarely or never summoned, even at the request of the parties.<sup>1</sup>

In a few areas employers and workmen were keen to exercise their legal rights as regards medical referees but, 'in most areas', the respective provisions were 'practically a dead letter'. The Committee proposed to facilitate references to medical referees by giving certain powers to the registrar. It further recommended that either party should have the right to obtain a summons to the referee to sit with the judge as assessor, with the right to cross-examine witnesses through the judge. In the words of Warrington L.J.:<sup>2</sup>

What is the function of a medical referee? I think it is quite clear his function is to give the Judge the benefit of his scientific knowledge and medical experience as to the proper conclusion to be drawn from a scientific point of view from the external facts deposed to in evidence: not to weigh the evidence of those facts and then to say that the facts were otherwise; but accepting the facts to state what in his view is the proper inference in a scientific sense to be drawn from them.

Necessary as is medical evidence, there is no doubt that the ability of either side to call medical witnesses who can give quite irreconcilable evidence, on oath, for their respective clients upon medical issues, has been and still is a fruitful cause of expense.

In the words of His Honour Judge Ruegg:<sup>3</sup>

I am sure there is a lot of money wasted over medical evidence.

<sup>1</sup> Cf. *Report*, p. 60.

<sup>2</sup> *Carpenter v. Wandsworth Borough Council*, [1917] 10 B.W.C.C. 340.

<sup>3</sup> Cf. A. 10490.

Many witnesses expressed the desire to see the medical referee appointed by the Home Office under an Act of Parliament and absolutely free from the danger of being influenced by any party, either employers' associations or insurance companies or workmen's associations<sup>1</sup> or any possible 'local' influences.<sup>2</sup> Others went further and expressed the wish to have a medical board instead of a single referee.<sup>3</sup> The evidence revealed a state of bewildering deficiencies in the matter, which in their majority turned to the disadvantage of the workman. Mr. Gallacher, Financial Secretary of the Miners' Union, speaking of industrial diseases in Scotland,<sup>4</sup> told the Committee that

the practice . . . is that the certifying surgeon's certificate is handed to the employer. That certificate is posted to the head office of the insurance company in Glasgow by the employer, and almost invariably an appeal is taken to the medical referee. As you know, an appeal can be taken within seven days of the handing on of the certificate. It may be ten days, or a fortnight, before the medical referee examines the man. There you get into the third week. Then after the medical referee has examined the man and dismissed the employer's appeal, as happens in 90 per cent. of the cases, his report is sent to the employer, and the employer then says: 'I want this man examined by my own doctor.' Then what we consider a lot of useless waste of time takes place, probably a fortnight or three weeks, examining and working up and down, before compensation is paid. I should say an average time of five or six weeks is taken in cases of industrial disease before any compensation is paid.

Here again the fundamental deficiency of the system stands revealed: on the one hand the injured workman anxiously waiting for a decision, for whom the matter was one of 'life and death', on the other hand the employer or his insurance body for whom the matter was merely one of business and who did not scruple to waste time and money in an attempt to get rid of the whole or part of his liability. The Committee could not ignore the strong arguments for some reform, paying on the one side due tribute to the independence of the existing referees—

great care is taken not to appoint any person holding an appointment which would identify him too closely with employers or workmen—

but admitted that so long as medical referees were allowed to engage in private practice they would be subject to a certain amount of distrust and suspicion.<sup>5</sup>

The Committee of 1903 had in fact advised, after a very full inquiry, that the medical referee should be a public official rather than a practising doctor.<sup>6</sup> The suggestions of the Committee were ignored in subse-

<sup>1</sup> Cf. Q. 604.

<sup>2</sup> Cf. Q. and A. 750.

<sup>3</sup> Cf. Q. 2148, 3165, 3752.

<sup>4</sup> Cf. A. 10808.

<sup>5</sup> See for an illustration p. 206.

<sup>6</sup> Cf. *Report*, 1904, p. 101. As to the evidence given before that Committee as to 'the danger of the medical referees under the present system becoming partisans', cf. p. 99 and

quent legislation; it was suggested that there would not be enough work under the Act for a whole-time referee and that a medical referee devoting his time only to reporting and deciding cases under the Workmen's Compensation Acts might not be able to maintain his efficiency. We shall deal at a later stage with this important matter and see whether arguments such as these are really strong enough to preclude the appointment of State Medical Officers whose duty it would be to deal exclusively with compensation cases. It will then also be our task to discuss the very authoritative evidence of Mr. J. Smith Whitaker, M.R.C.S., L.R.C.P., then Senior Medical Officer for the Ministry of Health, who first suggested some linking up of the National Health Insurance Act with Workmen's Compensation by an appointment of whole-time medical officers by the Ministry of Health undertaking the work of medical referees under the Workmen's Compensation Act as part of their official duties. This suggestion was stated by the Committee as worthy of earnest consideration, but they made no definite recommendations,<sup>1</sup> nor can we blame them for feeling unable to tackle this complicated and controversial matter.

We conclude this lengthy scrutiny of the findings and evidence of the Holman Gregory Committee by a short summary of the conclusions to which we have been led. We must begin by recording our regret that there was no 'Minority' Report. The Committee discussed most of the questions arising from its terms of reference with great frankness and objectivity. But it was determined to retain the existing system of Workmen's Compensation—a system based, as far as possible, upon restricted liberty of the individual employer to insure, if at all, against the risks of liability where and how he liked, upon the avoidance of compulsory or State insurance and continued reliance upon private insurance companies and mutual associations as the main carriers of insurance. This fundamental attitude was defended with great energy by many individual members of the Committee who asked frequent questions designed rather to affirm these principles than to elicit information from a witness. In such verbal battles those members who represented organizations of employers and insurance interests took an active part: those who owed their appointment to their connexion with trade unions and the official Labour party seldom took any part.

Yet almost every page shows that there was ample room for doubt as to whether the existing system could be made to serve modern needs. One of the immediate effects of the appointment of the Committee was the evidence of Mr. Drew, of the Bradford and District Trade and Labour Council, Q. 6026-31.

<sup>1</sup> Cf. *Report*, pp. 62 and 73.

the agreement between the offices of the Accident Office Association and the Home Office as to expense ratios (see p. 166). This might be regarded as a first step along the road of State interference which had been so much disapproved by the framers of the Act of 1906 in spite of all arguments brought forward in favour of it. This agreement averted an acute 'danger' to the insurance offices, which otherwise might have seen their administration of the costs of insurance to the employer much more closely scrutinized. But whether this arrangement alone can properly be regarded as a sufficient protection of the insured against unduly 'high' premiums is a question which cannot be so easily settled. Whether we regard the present expense ratio (*including* medical and legal charges) of some 38 per cent. as reasonable or as excessive, it was clear that the existing system was wasteful, injurious alike to the insured and to the injured, and to the nation as a whole, which after all has to pay the bill. The Committee showed that, in the absence of a compulsory system, many employers were uninsured and very many workmen and dependants had been left unprotected. The Committee felt bound to propose compulsory insurance. It realized the necessity for, and the difficulty of, ensuring the financial stability of some insurance offices and proposed certain safeguards which proved inadequate. It recommended the appointment of a Workmen's Compensation Commissioner with wide powers. He was to be authorized to take the initiative in many matters, such as disputes and the administrative reforms relating to the registration of agreements and settlement of claims, but also in respect of the working out of comprehensive schemes of benefits and other matters, and directly or indirectly to exercise control in many directions.

The Committee saw that the whole system under which Workmen's Compensation was administered was defective. They proposed to add to the duties of registrars as regards the recording of agreements. It was revealed that the jurisdiction of county courts in disputes was hampered by a bewildering variety of practice and of opinion on many important subjects, and that simplification of, if not a completely new, procedure was necessary,<sup>1</sup> as a first step towards the reduction and simplification of legal forms and procedure with a view to lower costs and speedier decisions. The Committee's recommendations were designed to give additional powers to county court judges and to medical referees who were to assist the judges and might become state officials and linked up with National Health administration.

<sup>1</sup> In 1915 a writer had called attention to the fact that a total of 154 pages of fine print were required to set forth all rules and forms adopted by County Courts of England for administering the Workmen's Compensation Acts. Cf. Adshed Elliot, *The Workmen's Compensation Act* (7th edition), 1915, appendixes.

The Committee's principal recommendations thus favoured greater control by the State, wider powers to legal administrators, closer supervision of private or mutual bodies, centralization of administrative powers and more State intervention on the medical side in the matter of claims and their settlement. The gap between accident prevention and Workmen's Compensation was revealed. The aid of the proposed Workmen's Compensation Commissioner was sought to prescribe new schemes with a view to arousing the consciences of employers. Is all this not proof enough that it was the 'system' which was disappointing? Did not all these proposals, taken as a whole, demonstrate that further responsibility must be assumed by the State, even in the opinion of a Committee which could not be said to have neglected the employer's point of view? Were not all these proposals a device to deprive the English system of its prime asset—'freedom of contract', subject to a minimum of administrative and centralized control? The Committee's almost cynical dictum

The present system to continue . . .

was printed side by side with irrefragable proof as to the need of radical changes in a system which the Committee proposed to perpetuate by applying just those checks which, as a matter of principle, the framers of the original legislation had been at pains to avoid.

The Committee was unanimous in rejecting State interference, which might take the administration of Workmen's Compensation out of the hands of private interests and subject it to the supervision and control of the State. But the reforms which it sponsored involved State intervention without State responsibility for the consequences. Had the experience of the past forty years justified this ambiguous attitude on the part of the Committee? We have tried to show that this question must be answered in the negative. The evidence not only of the representatives of the Labour party but of many other witnesses with no political affiliations gave a very disquieting picture of deficiencies and evils, the existence of which had already been complained of by the Committee of 1904 and the Farrer Committee of 1907, on the well-weighed evidence of solicitors, magistrates, and other official persons. The main grievance had remained. Insurance companies and mutual associations alike were eagerly trying to rid themselves either totally or partially of the claims which might be or actually were put forward in connexion with accidents. In countries which, like Germany and, to some extent, the U.S.A., had adopted some form of public administration of Workmen's Compensation official or quasi-official bodies were intervening impartially between the employer and the workman. In England a third party, namely the insurance offices,

had been set up between employer and employed, whose business it was to relieve the former of his responsibility towards the latter in cases of injury, and to do so on a competitive profit-making basis. The only impartial body to which the workman could look for protection was the county court, but even the courts might fail to do justice owing to deficient machinery and lack of specialist advice. Workmen, vaguely aware of this, were rather reluctant to embark on the treacherous ebb and flow of litigation and, unless they had a union or friendly society behind them, were apt to succumb to the solicitation and persuasive or minatory tactics of insurance bodies and to agree to a speedy settlement outside the law. Even registration of agreements might be avoided. The economic position of the workman and his family, if he was married or had dependants, pressed in the same direction. His main concern was to get over the period of greatest strain immediately after the occurrence of the accident. Hence the cruel struggle of which one impartial authority, the Recorder of Dublin, remarked that it was a matter of money for the insurance company or the employer, but of life and death for the workman. This struggle was originally justified as a form of 'bargaining'. The evidence before the Committee demonstrated the falsity of this view. The parties to the bargain were too unequally matched. On the one side the insurance office or the employer, able to wait, to employ solicitors, to prevaricate, or to fight; on the other the workman, lacking the money to procure the elementary needs of existence, often unable to employ a solicitor, sometimes the victim of a bad one, attracted by a derisory lump sum which seemed nevertheless a fortune in comparison with his weekly earnings.

The Report of the Committee was bound to exercise a profound influence upon future legislation: that the Committee failed to realize the immense social importance of the problems upon which they were appointed to pronounce or, if they realized it, to make it clear to the public in the body of the Report, must be regarded as a major misfortune which has affected the whole course of subsequent legislation.

The Report of the Committee might have become a *locus classicus*, a landmark in the history of Workmen's Compensation: it proved to be no more than a milestone. Had it contained a fair picture of the sociological background of industrial injury and disease it might have exercised a decisive effect upon public opinion which, in 1922, was very ready for forward movements in this and other branches of public health and welfare. It did none of these things. The right and left wings of the Committee had nothing whatever in common with each other: as a body it lacked unity of purpose and of direction and it restricted its recommendations to legal and administrative matters of secondary importance. It failed to impress Parliament or the public

with the magnitude of the problem and with its urgency, with the result that only some of its recommendations, and those not the most important, were embodied in subsequent legislation. The publication of the Report scarcely caused a ripple upon the stream of public opinion: the rejection of the proposal for a Workmen's Compensation Commissioner evoked no protests in Parliament. Of the five Members of Parliament who sat on the Committee only two spoke in the debates on the Bill of 1923, and their contributions were relatively ineffective. The Ministry of Health had nothing to say on the subject and the disquieting gaps between accident prevention and compensation, and between medical treatment of injured persons and the National Health Insurance services, remained unclosed.

Radical solutions of any kind were in fact precluded by the preconceptions of the Committee which they themselves expressed in their introductory words:

The present system to continue . . .

Three years elapsed before the Government introduced a Bill to give effect to some of the Committee's recommendations. It might have been even longer delayed but for the welcome given on both sides of the House to a Private Member's Bill, sponsored by the Labour Party, and drafted on more comprehensive lines, which as we shall later show was debated in May 1923, but went no further.

## CHAPTER XII

### MR. J. H. THOMAS'S BILL OF 1923

'Even to-day there is an entire failure to appreciate the real basis on which Workmen's Compensation should rest.'

MR. J. H. THOMAS, *H.C. Debates*, May 4th 1923.

THE Holman Gregory Report was published in July 1920<sup>1</sup> but, owing to the impossibility of securing any sort of agreement between representatives of employees and employers and of insurance companies, on the lines advocated therein, no action had been taken by the end of 1922 to give legislative effect to any of its recommendations. In May 1923, however, Mr. J. H. Thomas, M.P., Secretary of the National Union of Railwaymen, who as a private member had been lucky in the ballot for precedence in introducing Private Bills, obtained without a division a Second Reading for a Workmen's Compensation Bill,<sup>2</sup> designed to give effect to the principal recommendations of the majority of the Holman Gregory Committee and, at the same time, to effect some consolidation of the law.

The principal changes proposed in the Bill, as set forth in the Explanatory Memorandum, were as follows:

1. *A Workmen's Compensation Commissioner* to be appointed to carry out certain of the recommendations of the Departmental Committee and certain duties now discharged by the Home Office including provisions for compulsory insurance; the supervision of rates of premiums of insurance companies, and the restriction of their expenses and profits in Workmen's Compensation business: and also for accident prevention.

#### 2. *Persons entitled to receive Compensation.*

- (a) Persons employed otherwise than by way of manual labour whose remuneration is at a rate not exceeding £350 a year (instead of £250).
- (b) Employment of a casual nature for the purposes of any game or recreation where the persons employed are engaged or paid through a club (but otherwise casual employment to remain as at present).
- (c) Taxi-cab drivers who, on the ground that they are the bailees of their cabs rather than the servants of the cab-owner, are at present excluded.
- (d) Share fishermen employed in the trawler industry.
- (e) Share fishermen employed in the herring or other fishery to be brought

<sup>1</sup> On July 13th: evidence on Oct. 21st 1920.

<sup>2</sup> It was backed by Mr. Clynes, Mr. T. Shaw, Mr. F. Hall, Mr. Sexton, and Mr. A. Greenwood. It had been read a first time on Feb. 16th, but was printed and circulated only a few days before the Second Reading Debate.

within the Act by Order of the Commissioner if he is satisfied after public enquiry that they ought to be included.

(f) All persons ordinarily resident in Great Britain employed or travelling in the course of their employment in a British ship.

3. *Injuries within the scope of the Bill.* For the phrase 'arising out of and in the course of the employment' the Bill substituted the words 'in the course of the employment', subject to the following provisos, which we quote textually from the Bill:

- (a) The employer shall not be liable under the Act in respect of any injury which does not disable the workman for a period of at least three days from earning full wages at the work at which he was employed; and
- (b) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or wilful default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may at his option either claim compensation under this Act or take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid; and
- (c) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.
- (d) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the person injured is a workman to whom this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the provisions of the Second Schedule to this Act.
- (e) If, within the time hereinafter in this Act limited for making a claim for compensation under this Act an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, without prejudice to the right of the plaintiff to appeal from such determination, proceed to assess such compensation, but may, if it so think fit, deduct from such compensation all or part of the costs which, in its judgment have been caused by the plaintiff bringing the action instead of proceeding under this Act.

In any proceedings under this subsection when the court assesses the compensation it shall give a certificate of the compensation which it has awarded and the directions, if any, which it has given as to the deduction for

costs, and, subject to the result of any appeal and any order of the appellate court in regard to any such certificate, such certificate shall have the force and effect of an award under this Act.

(f) Nothing in this Act shall affect any proceedings for a fine under the enactments relating to mines, factories or workshops, or the application of any such fine.

4. *Benefits.* The compensation payable under the Bill was as follows:

#### IN FATAL CASES:

##### *Total dependants:*

- (a) Where a widow is left, £250.
- (b) Where a child or children under 15 years of age is or are left, a weekly allowance of 10s. for the first, 7s. 6d. for the second, and 6s. for every other child; the said allowance to be provided by the payment of the employer into a central fund of the sum of £500 in every case of a workman dying and leaving a child or children under 15 years of age.
- (c) Where other total dependants are left, in addition to those above-mentioned, a further sum not exceeding £50.
- (d) Where total dependants are left, not including widow or children under 15, the sum of £250.

##### *Partial dependants:*

A sum representing the value of the deceased workman's contributions to the support of the partial dependants (the term 'support' being taken to mean the provision of the ordinary necessities of life suitable for persons in their class and position) with a maximum of £250.

Where any total dependants are left, no partial dependant other than the widow to be entitled to compensation.

Burial and medical expenses: Increase to £15.

#### IN CASES OF INCAPACITY:

*Total incapacity:* 66 $\frac{2}{3}$  per cent. of the average weekly earnings.  
Maximum, £3.

##### *Partial incapacity:*

- (a) Two-thirds of difference between the average weekly earnings before the accident and the average amount the workman is earning or is able to earn in some suitable employment after the accident.
- (b) Where the workman can show that the rate of wages generally paid by employers to workmen in that district at the time of his accident have at any time thereafter increased by upwards of 20 per cent., he is to be at liberty to claim compensation on the basis of the difference between what he is at present earning or able to earn, had he received the benefit of such rise; the employer to be entitled to make a corresponding application for reduction in respect of a wage decrease.

In the case of minors, compensation to be based upon the same percentage of earnings as in the case of adult workmen, but existing special provisions for reviewing weekly payments to be continued, with amendments.

Waiting period to be three days with no dating back.

Any medical and surgical aid necessary in addition to the medical treatment already available under the National Health Insurance Acts to be provided for the injured workman at the cost of the employer under a comprehensive scheme to be worked out by the proposed Commissioner.

There were also provisions dealing with industrial diseases, application to seamen, &c.

It was a moderate, cautiously drafted Bill. It contained no provisions which had not long been in successful operation in other great industrial countries. The only clause which departed substantially from the framework erected in 1897 was that relating to the appointment of a Workmen's Compensation Commissioner. This clause is of sufficient importance to deserve quotation in full:

*Appointment of Commissioner and provisions for compulsory assurance and accident prevention*

3. (1) A Commissioner shall be appointed by the Secretary of State, and the powers and duties of such Commissioner shall be determined by regulations to be made by the Secretary of State under this section, including provisions for:

- (a) The determination and supervision of rates of premium of any insurers in respect of any employer's liability or any part thereof under this Act;
- (b) the restriction of the expenses and profits of any such insurers, and the provision annually by such insurers of adequate reserves to meet any outstanding or unsatisfied liability under this Act;
- (c) requiring returns, annually or at such times as may be prescribed, of the income and expenditure of any such insurers in respect of any liability under this Act;
- (d) the establishment of schemes of surgical and medical treatment of and for training in suitable employment all workmen entitled to a weekly payment under this Act;
- (e) the control and distribution of moneys paid under this Act in respect of totally dependent children under fifteen years of age, and for the payment of weekly allowances for such dependent children;
- (f) the investigation and, if thought fit, establishment of schemes of schedule rating;
- (g) the preparation of a report to be presented annually to Parliament of the working of this Act, and for making recommendations to Parliament for

## POWER TO MAKE REGULATIONS

amendment of this Act, and reporting the development during the year of the law of workmen's compensation in other countries;

- (h) the extension of this Act to herring and other share fishermen; and
- (i) the discharge of all duties by this Act imposed upon the Secretary of State or the Commissioner or which may hereafter be transferred to the Commissioner under the provisions of this section.

(2) There may be transferred to the Commissioner such powers and duties of any government department in respect of this Act, or any part thereof, as may be directed by the Secretary of State with the concurrence of the Privy Council.

(3) It shall be the duty of every employer who may be liable to pay compensation in accordance with this Act, so long as he may remain so liable, either—

- (i) to deposit with the Commissioner such sum as may in the opinion of the Commissioner be adequate to satisfy any liability of such employer under this Act in respect of every workman employed by him; or
- (ii) to enter into a contract with such insurers as may from time to time be approved by the Commissioner in respect of any liability of the employer under this Act in respect of every workman so employed by him; Provided always that—
  - (a) this subsection of this Act shall not apply to the Crown or a local or other public authority or a statutory company or a householder in respect of domestic or menial servants not employed by him for the purposes of his trade or business; and
  - (b) any employer whose annual wage roll averages over a period of three years more than twenty thousand pounds, upon filing annually an application in prescribed form with the Commissioner, accompanied by a declaration in a form to be approved by the Commissioner, describing his trade or business and verifying his wage roll and a certified copy of his balance sheet for his then last trading year, shall be entitled to exemption from insurance unless in the opinion of the Commissioner good grounds exist why such exemption should not be granted or should be withdrawn.

(4) The Commissioner shall have power with the concurrence of the Secretary of State to make regulations for the purpose of carrying the foregoing subsection into effect.

(5) Any employer who shall fail to comply with the provisions of subsection (3) of this section shall be liable to a fine not exceeding ten pounds for every workman in respect of whom such employer might have become liable to pay compensation under this Act, which fine may be recoverable on summary conviction in manner provided by the Summary Jurisdiction Acts.

(6) The Commissioner may require insurers as a condition of receiving his approval under this section:

- (i) to deposit with him such sum or sums as he may deem to secure the satisfactory and prompt discharge of the liability under this Act of employers insured with such insurers;
- (ii) to undertake that every such insurer shall insure all workmen of any particular class at one uniform rate, or at such rates with such discounts as may be prescribed by him.

(7) The Commissioner shall, subject to this section, have power to refuse or withdraw or regrant approval upon such terms as he may deem expedient, but shall not grant his approval to any insurer who has not made the deposit required under this section.

(8) All sums deposited with the Commissioner under this section shall be invested by him subject to and in accordance with regulations made by the Treasury, and any interest accruing due on any sums so deposited shall be paid to the depositor.

(9) The Commissioner appointed under this section shall be remunerated out of moneys provided by Parliament.

In moving the second reading on Friday, May 4th 1923, Mr. Thomas said that the patience of the Labour Party had been exhausted by the long delay in dealing with the Holman Gregory Report; though the government had, a few months earlier, tardily promised action they had not as yet committed themselves to any particular line.

Fatal accidents, covered by the existing Acts, numbering 4,216 in 1914, were down to 2,385 in 1922; non-fatal accidents had fallen from 437,900 to 283,361.<sup>1</sup> The figures, though affected by the recent stoppage of work in the coal-mines for three months, were gratifying, but the totals were large enough to show how great was the need for co-operation to reduce it further. Some non-fatal accidents deprived men of sight, and of movement, many of all chance of earning a living. Men whose labour was their only capital found themselves deprived of it all.

The Bill, he said, did not represent the last word but the minimum which his party could accept. The need for limiting expenses and profits of insurance companies and mutual associations was shown by the scandalous fact that in 1921 of every £1 paid as premium by employers 9s. 8d. went in expenses for those who carried the liability. The increase of wage-limit from £250 to £350 was a necessary

<sup>1</sup> The figures for 1936 are 2,623 and 403,618, to which should be added 17 fatal and 19,081 non-fatal cases of disease.

consequence in the changed purchasing power of sterling. In support of the modification of the existing Act in its application to seamen he cited a case which his own Union had dealt with.

A coal trimmer met with an accident. He was engaged in trimming coal on board a steamer which was moored at the staith. He went into the cabin to wait until the vessel was ready. On returning from the cabin to the ship he was stepping over a steel rope which suddenly became tight, breaking his leg. He was engaged by the North Eastern Railway, paid by them and under their supervision. Compensation was refused by the Court of Appeal and that court declined to say who was the man's employer. Consequently he has received no compensation at all. This is an instance of one particular company. But in South Wales, Cardiff, Barry, and the North of England we have had trimmers and teemers who have met with an accident, and their employers will not accept responsibility because they say, 'the man is not employed by us', and very often the ship goes away, and we never hear anything more about it. What I put to the House is that we are not asking too much when we say that what an English employer is compelled by law to accept and to do for his workers these workers ought not to be deprived of because there happens to be a foreign employer involved in it.

He pressed strongly for the adoption of 'in the course of' instead of 'arising out of and in the course of' the employment, and cited the following cases in support:

There is the case of an engine driver on the North Eastern Railway. He was performing his usual duties, but owing to the back sand pipe not working properly he tapped it with a hammer. The hammer knocked the pipe out of position and the man endeavoured to force it back with his foot when he slipped, the engine wheel crushing his foot. The defence set up was deliberate and wilful misconduct, that is to say, that this man ought to have said, 'No, I will not take the risk. I will wait until I get to the engine shed and then I will report it, and the fitters shall deal with it.' Supposing in the interval it had come on to rain and the rails became slippery, the driver could not have stopped his train and I wonder what sort of defence he would have been able to make at a coroner's court in case of a fatal accident by saying, 'It was not my job to do it.' . . . this is always the preliminary defence. They say that this is deliberate and wilful misconduct because, technically, they argue that it is not the driver's work. Then they go on to say that because it is not the driver's work it does not arise out of his employment as a driver. Let me take another case. This is the case of a porter on the London and North Western Railway working in a warehouse. He was leaving the warehouse and had to walk across to the lift in order to get to another floor, but the lift being on the other floor he looked down the well of the lift to see where it was, and at that moment the lift came down and crushed his head. Simply because there was a notice instructing men not to place themselves in danger that man lost his case, both defences being considered to run concurrently. . . .

It is very often the insurance companies that do not understand the real relationship in the factory, and they are responsible for putting up such a defence because no sensible employer who knew the facts would dare to do it. Here is

the case of a fireman. Two engines were running together. He observed smoke issuing from the smoke-box and he went along the frame to screw it up. At the same time he attempted to uncouple and change the headlights, when he fell and the engine passed over his leg. The defence which I have already mentioned was put forward by the company and it held good, and he lost his claim for compensation. Now I have done that myself, and I say that there are thousands of engine-drivers doing it every day, and they are compelled to do it. I have walked along my engine on an express train in a blinding snowstorm, holding on to the hand-rails, because I wanted to see that things were right in front. It is true that the railway companies are doing all they can to prevent the necessity of walking round the frame because it is dangerous, but surely when something goes wrong and the man says, 'I am prepared to risk my life in order to see that things are all right' it is a monstrous thing that in case of an accident he is not entitled to compensation. I could mention scores of similar cases, but I think I have sufficiently illustrated that point. I am arguing against the injustice of these cases being excluded, and I would like to see developed what already exists in the Durham Miners' Association, namely, a Joint Committee to deal with these compensation cases, representing both sides, who understand the situation, instead of allowing the lawyer to show that A means B, and to deprive a man of compensation. Common-sense consideration has established this in the case of the Durham miners, and I want to see the same principle applied in these cases because it will do a lot of good.

He presented very effectively the case for adopting the recommendation of the Holman Gregory Committee for paying compensation on the basis not of average earnings, which may at any moment be exceptionally low owing to trade depression, but with some regard to the injured man's needs, his economic position, and the needs of his dependants.

He pleaded for a radical change, as provided in his Bill, of the definition of dependants and partial dependants, citing in particular the injustice of the existing definition.

I have known cases where the father has been killed, when soon afterwards the widow has died, and where a brother, the elder brother, has taken the whole responsibility of the family, often at great sacrifice to himself. I have known sisters take the responsibility of the younger children. Surely, if that be the fact, it is monstrous to argue that the son or the sister or whoever the relative may be is not wholly dependent.

In support of the increase from 50 per cent. to 66½ per cent. of average earnings, with a maximum of £3, as recommended by the Holman Gregory Committee, he said:

What I have said in reference to other changes is sufficient to justify this change without saying anything more about it. I want to deal with the question of miners. We find hundreds of boys and girls, mainly boys, utterly and absolutely ruined for life, and no fair estimate made of their chances in after-life. A boy loses an

arm or a leg. The father or the mother may have made great sacrifices to apprentice him. Who can estimate the possibilities of that boy's future? No one can define them. At the present time, cases frequently occur where the boy's future is wholly blighted and his life ruined, and often the miserable sum of £100 is paid as adequate compensation. We say that not only should that be altered, but that it should be altered, taking clearly into consideration the future of the boy and treating him as an adult and not as a junior.

Mr. (later Sir William) Jowitt, K.C., who followed him later in the debate, pressed strongly for compulsory insurance.

One of the most distressing experiences which one used to have as a young member of the Bar was fighting cases and winning, and then finding that the employer, who was a small man and employed one or two people, was not insured, so that one had to come repeatedly before the County Court Judge with a judgment summons for the payment of a few shillings a week which the man had never been able to pay off, with the result that he was more or less ruined, and the workman received no compensation.

He had no fears as to any increased litigation as a result of altering 'arising out of and in the course of' to 'in the course of' the employment.

A large number of the old cases have considered the question whether (a) the accident arose out of the employment and (b) whether it arose in the course of the employment. Therefore it seems to me that you will still have the guidance of cases already decided in determining whether the accident does or does not arise out of the course of the employment.

In the old days the theory was that it was not fair to call upon an employer to take a risk of injury to a workman unless the risk was reasonably incidental to his employment. That was why the words 'arising out of' were put in. In fact those words have led to a lot of very subtle distinctions which cannot have been in the mind of the legislature at the time. I am not asking for retrospective legislation. A man whose duty it is to stand on a ladder gets struck by lightning. He comes within the Act. He is exposed to an additional risk and therefore his being struck is an action arising out of his employment. But the gardener who is cutting a hedge, and is, as it were, on the ground floor, and is exposed to no peculiar risk, is struck by lightning. That accident is not 'arising out of' the employment. It really is ridiculous that the sums of money which are to be paid to men should depend upon what I may call logic-chopping of that sort. Therefore, I shall certainly support the scheme to substitute for the words 'arising out of and in the course of' the words 'in the course of'.

For the benefit of some hon. gentlemen who may be nervous on the matter, I would say that it has been decided time after time that if a man breaks off his employment to embark on some frolic of his own—he had delivered his goods and takes his sweetheart for a joy ride—although it may be within the currency of the employment, such an accident does not arise in the course of his employment. If the words 'in the course of' are in the Bill, employers will not be liable to pay in cases of that sort.

Sir John Collie, speaking with great experience as a medical referee, supported whole-heartedly the proposed appointment of a Workmen's Compensation Commissioner: except, indeed, for a few general complaints as to the bureaucratic tendency which the proposal evinced and the danger of centralization, the idea seems to have commanded general assent.

In winding up the debate the Home Secretary (Mr., later Lord, Bridgeman) explained that the Holman Gregory Report would have been acted on sooner but for the failure of his predecessor to get agreement between representatives of employers and workmen respectively as to legislation based thereon. He had not made a fresh attempt, as he was advised it would be a waste of time. He would shortly introduce a Bill which would 'steer between the extreme views of both parties and satisfy neither of them'. The sums charged as 'expenses' by insurance companies appalled him: it was necessary to reduce them, but it was also necessary to avoid crippling industry by unduly increasing amounts payable as compensation. On the appointment of a Workmen's Compensation Commissioner, and on compulsory insurance, he had nothing to say: he did not, however, exclude the possibility of modifying the words 'arising out of and in the course of'. No more was heard of Mr. Thomas's Bill and, a few weeks later, the Government measure entitled 'Workmen's Compensation No. 2 Bill' was brought in and referred to a Standing Committee.

## CHAPTER XIII

### THE NEW LEGISLATION (1923-34)

#### A. THE PRINCIPAL ACTS

‘... from distracted and imperfect attention and insufficient mastery of the facts, or from pressure of ignorant and interested opposition, measures for the application of important principles are commonly crippled in the course of legislation, and the crippled measures passed are usually further crippled in their administration.’

EDWIN CHADWICK, *Address to Convocation, University of London, 1867.*

IT is our purpose in this and the following chapters to summarize and analyse the additions made to the Statute Book, so far as they directly relate to our subject, since the publication of the Holman Gregory Report, with the impressive opening phrase ‘The present system to continue’. The ‘system’ in 1923 was substantially that initiated in 1897; the principles then approved by Parliament have remained substantially unaltered by later legislation which, so far as still in force, may be summarized as follows:<sup>1</sup>

1. *Workmen’s Compensation (Amendment) Act, 1923* (13 & 14 Geo. V, c. 42).  
Amends the Workmen’s Compensation Act, 1906, and the Acts amending that Act, and to amend the law with respect to employers’ liability insurance, the notification of accidents, first aid and ambulance.
2. *Workmen’s Compensation Act, 1925* (15 & 16 Geo. V, c. 84).  
Consolidates the law relating to compensation to workmen for injuries suffered in the course of their employment.
3. *Workmen’s Compensation Act, 1926* (16 & 17 Geo. V, c. 42).  
Amends subsection (2) of section 11 of the Workmen’s Compensation Act, 1925.
4. *Workmen’s Compensation (Transfer of Funds) Act, 1927* (17 & 18 Geo. V, c. 15).  
Amends subsection (2) of section 11 of the Workmen’s Compensation Act, 1925.
5. *Companies Act, 1929* (19 & 20 Geo. V, c. 23).
6. *Workmen’s Compensation Act, 1930* (Silicosis and Asbestosis) (20 & 21 Geo. V, c. 29).<sup>2</sup>
7. *Workmen’s Compensation Act, 1931* (21 & 22 Geo. V, c. 18).  
Amends subsection (4) of section 9 of the Workmen’s Compensation Act, 1925.
8. *Workmen’s Compensation (Coal Mines) Act, 1934* (24 & 25 Geo. V, c. 23).  
Provides that the owners of coal-mines in Great Britain shall insure

<sup>1</sup> *The Adoption of Children (Workmen’s Compensation) Act, 1934* (24 & 25 Geo. V, c. 34) contains important provisions relating to the rights of adopted children to compensation, but is not one of the Workmen’s Compensation Acts.

<sup>2</sup> The Silicosis Acts of 1918 (8 & 9 Geo. V, c. 14) and of 1924 (14 & 15 Geo. V, c. 40) were repealed by the Act of 1925, which dealt with this matter (cf. § 47); this section was again amended by this Act.

against, or otherwise ensure the discharge of, their liabilities under the Workmen's Compensation Act, 1925, and to enable certain mutual indemnity associations to make deposits with the Accountant General of the Supreme Court.

Of these Acts, those of 1923 and of 1925, upon which the whole edifice of Workmen's Compensation still rests, alone cover the whole field of Workmen's Compensation, though the Act of 1930 relates to the vital matter of industrial diseases; that of 1934, hereafter referred to as the Nicholson Act, having been introduced by Mr. Godfrey Nicholson, M.P., a private Conservative Member of Parliament, dealt for the first time with the question of compulsory insurance for miners. The whole of the Act of 1923 has, however, been repealed except § 1 (*Repeal of War Addition Acts*<sup>1</sup>); § 6 (*Provision with respect to Certified Schemes*); § 28 (*Notification of Accidents*); § 29 (*First Aid and Ambulance and Safety Orders*); §§ 30 and 31 (*Application of the Act, Short title, Construction, Extent, Commencement and Repeal*). In dealing with the main changes that have taken place in Workmen's Compensation since the publication of the Holman Gregory Report in 1922, we shall therefore refer to the Act of 1923 as though it were, as it might conveniently have been, a consolidating measure.

In analysing this measure it is well to note in advance how far it fell short of the modest recommendations of the Holman Gregory Committee. The Act of 1923 did not impose compulsory insurance, the need for which was emphasized by the Committee, and by many speakers in the debates on Mr. Thomas's Bill, who drew attention to the importance of protecting injured workmen and their dependants from the negligence, bankruptcy, poverty, or death of a large class of small employers. 'The Government . . . decided that compulsory insurance was going too far.'<sup>2</sup>

Compulsory insurance would certainly necessitate some sort of control and supervision of the private insurance business by the State, and therefore, to that extent, would, to some persons, be a 'bad law'. In the absence of such control employers would be at the mercy of insurance companies, as their workmen already were. In the case of the latter, the conception of 'bargaining', on terms however unequal, had seemed to many and is still widely regarded as necessary

<sup>1</sup> *The Workmen's Compensation (War Addition) Act, 1917, 7 & 8 Geo. V, c. 42*, increased weekly payments by 25 per cent. for the period of the War and six months after. *The Workmen's Compensation War Addition (Amendment) Act, 1919, 9 & 10 Geo. V, c. 83*, increased this figure from Jan. 1st 1920 to 75 per cent.

<sup>2</sup> Cf. *Departmental Committee on Compulsory Insurance, 1936, Evidence, A. 1688*. Mr. G. R. A. Buckland (Secretary to the Holman Gregory Committee in the early days of the inquiry).

and reasonable, but its application to industry was regarded as likely to be a crippling handicap, despite the freedom of the employer to choose his insurance company. Compulsory insurance therefore found no place in the Bill: the same fate befell the proposed Workmen's Compensation Commissioner with powers to fix maximum rates of premium. The Holman Gregory Committee had urged that Mutual Indemnity Associations should be placed under the same obligations in regard to funds as insurance companies; the Bill of 1923 made no such provision, though the Nicholson Act of 1934 (also a private member's Bill) did so ten years later in the case of Mutual Indemnity Associations in the Mining Industry. The Holman Gregory Committee had suggested some modification of the principles of *laissez-faire* implicit in the existing law; the official sponsors of the Bill of 1923 had to be content with a few modest improvements. Few members understood the Bill. The Labour party itself was weak: many members of other parties seemed to regard the subject of the Bill as a technical matter, mainly affecting insurance companies. This is the view of many employers, who are most careful to fulfil their obligations under the Factory Acts but are afraid to interest themselves in a compensation case lest they should jeopardize their rights under their policies. If they do anything themselves they tend to regard it as an act of pure charity.

*Persons entitled to receive Compensation.* The Holman Gregory Committee recommended £350 in place of £250 as the upper limit of remuneration of persons within the scope of the Act (i.e. gainfully occupied in manual labour). This was accepted, as also was the division of certain casual employments for the purpose of any game or recreation. As to share fishermen (see p. 181) the Bill only partly followed the recommendations of the Committee by extending the scope of the Act to members of a crew not 'wholly or mainly' remunerated by shares, whilst empowering the Home Secretary to make certain modifications by Order. The position of 'seamen' in general was likewise improved.

*Benefits payable to injured workmen or to the dependants of those meeting with fatal accidents.* These were considerably improved.

The Holman Gregory Committee had proposed a sum of £250 in place of £150 where a widow was left; the Bill as amended in Committee provided that if a workman should leave any person wholly dependent upon his earnings, the compensation should be £200 or three years' earnings, whichever be greater, up to the maximum of £300, but did not make this increase retrospective.<sup>1</sup> The Bill gave effect to the Holman Gregory Committee's proposals to

<sup>1</sup> Cf. § 8 (1-3).

pay supplementary compensation in respect of juvenile dependants—an important step forward. Where the dependants included one or more children under the age of 15, as well as a totally dependent widow or some other member of the family over the age of 15, provision was made for a supplementary allowance varying according to the age of each child, subject to a maximum of £600. This was £200 less than the Holman Gregory Committee had recommended as the maximum compensation in respect solely of a workman's death. This maximum would, for instance, be payable to a widow with two children under 7 years of age—to give one of many possible examples—when the average wage of the deceased breadwinner was £3 a week.<sup>1</sup> A person can claim to be 'partially dependent' only if he has, in some measure, looked to the deceased workman for the ordinary necessities of life suitable for persons in his class and position. If the workman leaves persons partially dependent, the compensation is to be such sum as will be reasonable and proportionate to the loss sustained by such dependants, but not exceeding the amount payable to wholly dependent persons.<sup>2</sup> This, too, was an improvement and was recommended by the Holman Gregory Committee. Under the Acts of 1897 and 1906 the maximum had been £300. Burial money was also raised, as recommended, from £10 to £15.

*The date from which payments should be made in respect of injuries resulting in disablement.* This was fixed in the Bill, as recommended by the Committee, at the fourth day of disablement unless the disablement should last for four weeks or more, a considerable improvement as compared with the former Act.<sup>3</sup>

*Benefits in cases of total incapacity.* The Holman Gregory Committee recommended the payment of two-thirds of the average weekly earnings, with a maximum of £3, as against half-pay with a maximum of £1 under the 1906 Act. The Bill did not embody this recommendation, which went no further than the existing law in Germany and in several states of the U.S.A., but was rejected in Standing Committee. An attempt to amend the Bill in this direction in Committee was frustrated by the Home Secretary,<sup>4</sup> who threatened to drop it if an amendment to this effect were carried. He explained that when the Holman Gregory Committee recommended 66 $\frac{2}{3}$  per cent. wages were high and trade booming, as was, he added irrelevantly, the cost of living. It may be surmised that the Ministry of Pensions, with some

<sup>1</sup> Cf. *Home Office Memorandum on the Workmen's Compensation Acts, 1925-31, 1936*, p. 9.

<sup>2</sup> Cf. § 4 (1-3).

<sup>3</sup> Cf. § 1 (1) proviso and § 9 (i) (a). Trade unions had urged that payment should date from the day of the accident.

<sup>4</sup> *Debates H.C.*, Nov. 23rd 1923.

hundreds of thousands of totally or partially disabled soldiers on its pay-rolls, was concerned to avoid invidious comparisons between the rates recently approved by Parliament and those proposed by the Holman Gregory Report. The amendment would entail 'a very large and serious charge'<sup>1</sup> not merely upon employers but upon industry as a whole and, therefore, upon those who earned their living therefrom. The payments contemplated by the Bill, therefore, were on a lower scale than had been recommended by the Holman Gregory Committee.

*Partial disablement.* In the case both of total and of partial disablement the scales of payment embodied in the Bill distinguished between workmen earning 50s. a week and upwards and those earning less than that sum. For the latter, the scales<sup>1</sup> are somewhat complicated through the additions to be granted; for the former 50 per cent. of average earnings was laid down, with a maximum of 30s. a week<sup>2</sup> as compared with the sum of £3 proposed by the Holman Gregory Committee<sup>3</sup> and the modest amelioration provided in Mr. Thomas's Bill.

In every case, where the average weekly earnings are 25s. or less, the amount of compensation payable is, for total disablement, 75 per cent. of such earnings and, for partial disablement, 75 per cent. of the difference between the average earnings before and after the injury. The intention was clearly to raise minimum categories in the lowest scales, if only to keep them so far as possible from becoming a charge on the Poor Law. We shall have to inquire into the justice of such regulation when, in our next volume, we inquire into the present-day aspect of the question.

The Holman Gregory Committee envisaged the extension to injured workmen, at the cost of employers, of a wide range of medical and surgical aid which was already to some extent available under the National Health Insurance Act. The prospect of a comprehensive

<sup>1</sup> Cf. *Debates H.C.*, 1923, vol. clxviii, p. 155.

<sup>2</sup> § 9 (1-4).

<sup>3</sup> We give here an abbreviated table of the rates of compensation payable to disabled workmen whose average weekly earnings are from 30s. to 60s. per week:

| Amount of average weekly earnings | Compensation during total disablement | Compensation during partial disablement. |                  |
|-----------------------------------|---------------------------------------|--|------------------|
|                                   |                                       | s.                                       | d.               |
| 60 or over                        | 30 0                                  |  | ..               |
| 50                                | 25 0                                  |  | 50               |
| 40                                | 22 6                                  |  | 56               |
| 35                                | 21 3                                  |  | 60 $\frac{1}{2}$ |
| 30                                | 20 0                                  |  | 66 $\frac{1}{2}$ |

scheme on these lines, to prepare which would have been one of the tasks of the Workmen's Compensation Commissioner, disappeared when he was eliminated from the Bill. This great gap in the National Health Defence Service has, in consequence, remained unfilled to this day,<sup>1</sup> though the beginnings of a nursing service have been introduced into industry, and a few large firms have created their own medical departments. Had the Government Bill of 1923 embodied the far-reaching proposals of the Holman Gregory Committee in this all-important matter, we should be able to point to fourteen years' experience of the expert treatment of industrial injuries by modern methods instead of to a few sporadic experimental beginnings.

*Notice of Accident and Claim.* The Government Bill followed the recommendations of the Holman Gregory Committee as to the exhibition of statutory notices to enable the workman to ascertain the terms of the law, particularly as to notice of accidents, making of claims, and as to the procedure to be followed in the case of industrial diseases (§ 15 (1)). Prescribed particulars of industrial accidents were to be entered in an accident book (§ 15 (3)). Notice of accident might in future be given either in writing or orally (§ 14 (2)) and not, as in the 1906 Act, in writing only. Failure to give notice of an accident in the manner prescribed might debar the workman from taking proceedings to enforce his claim for compensation. But important exceptions, set out in the Bill, provided that want of notice of accident, or any defect or inaccuracy relating thereto, should not bar proceedings under the Act (§ 15 (2) (a)–(d)), a most valuable fresh safeguard to injured men and to surviving dependants.

*Review of weekly payments.* The Holman Gregory Committee had recommended that all weekly payments should be payable until altered by agreement or by order of the arbitrator.<sup>2</sup> The Bill (§ 12) forbade any employer, unless in pursuance of an agreement or arbitration, to end or diminish a weekly payment, save in specified cases (see p. 205). As the law now stands<sup>3</sup> the employer is not entitled, without consent of the workman or an order of the judge or other arbitrator, to end or reduce the weekly payments unless the workman

- (i) is in receipt of compensation for total incapacity and has actually returned to work;

<sup>1</sup> Cf. *Political and Economic Planning. Report on the British Health Services*, Dec. 1937, pp. 82 and 85.

<sup>2</sup> Under the 1906 Act, weekly compensation payments, unless the subject of an award or a recorded agreement, could be stopped at any time, pending the outcome of legal proceedings against the employer by the workman, whose ignorance, shyness, and helplessness had thus been consistently exploited.

<sup>3</sup> As modified by the House of Lords in *Davies v. Ocean Coal Co.*, 19 B.W.C.C. 223.

(2) is in receipt of compensation for partial incapacity and his earnings have actually been increased;

or (3) unless a medical certificate has been furnished by the employer's doctor to the effect that the workman has wholly or partially recovered, in which case the employer must send the workman a copy of the certificate with a notice of his intention, at the expiration of ten clear days from the date of the service of the notice, to end or diminish the weekly payment. It is then open to the workman to be examined by his own doctor; if his own doctor reports that he has not fully or partially recovered and the report is sent to the employer before the ten days expire, the employer will not be entitled to stop or reduce the compensation, except in accordance with the decision of a medical referee (§ 12 (3) (i)-(iii)).

The new legislation here seems to have gone farther than the Holman Gregory Committee which, in order that 'some protection should be provided for the employer', proposed to empower a registrar on the *ex parte* application of an employer to make an interim order reducing or suspending the weekly payment pending a decision of the issue by the arbitrator.<sup>1</sup>

*Inability to obtain light work.* The Bill included provisions to meet the case of a workman who has so far recovered from an injury as to be fit for work of a certain kind, but fails to obtain employment. The Holman Gregory Committee recommended that if a workman applied for a review the onus of proving inability to obtain suitable work should rest on him, and that, where an application for a reduction of the weekly payment is made by an employer, it was for the latter to establish that such work as would justify the reduction of compensation is normally available in the district. This point was dealt with at length in the Commons on the Committee stage of the Bill. In the debate on the point Mr. G. Barker, M.P., gave a vivid description of prevailing conditions.<sup>2</sup>

The Amendments affect tens of thousands of men, who at the present time have met with accidents while following their employment and have only partially recovered. One of the most melancholy spectacles to be seen is that of an injured workman, lame and crippled, trying to comply with the conditions imposed on him by the Workmen's Compensation Act. To prove that they have been unable to obtain suitable employment, these men have to go from colliery to colliery, or factory to factory, asking for employment although they are only partially able to work. In these circumstances, with the labour market congested as it is, these men are utterly unable to find employment, and it is very unreasonable to expect

<sup>1</sup> Cf. *Report*, p. 52.

<sup>2</sup> Cf. *Debates H.C.*, Nov. 13th 1923.

them to do so. . . . We say it is inhuman to pass any Act of Parliament which puts the obligation on the partially incapacitated man to find employment.

The Home Secretary agreed that 'where a workman has taken all reasonable steps to obtain employment and has failed as a result of the injury he has sustained in his employment, full compensation should be continued', but deprecated the idea that the employer should be urged to do anything in the way of finding employment for such men. 'It would take away from the man the incentive to try and find employment, and would impose on small employers a very heavy burden which an employer of only two or three men might be unable to bear.' The practice of some good employers, said Major Paget, M.P., was to pay an injured man full compensation until they found a suitable job for him—a form of individual charity on which it would be unreasonable for the legislature to expect workmen to rely and, as Major Paget remarked: 'It is no good telling a miner who has lost both legs that he can have only partial disablement benefit, because similarly disabled men are earning £4 a week making silk jumpers.' The partial solution of this problem, itself closely linked up with legislation relating to unemployment,<sup>1</sup> is directly related to measures of rehabilitation, and to the provision, as in Germany, and in some large establishments in the U.S.A., of reserved occupations for such partially disabled men, a sort of Industrial King's Roll.

The framers of the Bill of 1923, pent within the existing legislative framework, did not envisage any such palliative measures. Yet during the years 1919–24 the efforts of energetic official and unofficial bodies to provide for disabled soldiers and sailors in special colonies (e.g. Papworth), in special workshops (e.g. St. Dunstan's and Lord Roberts's Workshops), and in a great variety of occupations were much in the public eye, and were notably successful. We can see no reason why the disabled soldiers of the industrial army should not be dealt with on substantially parallel lines by the seven great industries in the first instance, for experience in Germany and the U.S.A. shows that all large industries can use to financial advantage the services of all their disabled men, even when the degree of disability is high, provided that the objections of insurance companies are not allowed to stand in the way.

The 1923 Bill adopted the recommendation of the Holman Gregory Committee that, in such cases as those described by Mr. Barker, partial incapacity should be treated at the discretion of the courts as total incapacity.<sup>2</sup> The present position (1938) is that if

<sup>1</sup> Cf. Mr. Bridgeman in the Debate of Nov. 13th 1923: 'If... failure is due to shortage of employment, then that is a matter to be dealt with by unemployment, not insurance, legislation.'

<sup>2</sup> (§ 9 (4).) The subsection in question was, however, repealed by the Workmen's

a workman who has so far recovered as to be fit for employment of a certain kind<sup>1</sup> has failed to find employment and shows to the satisfaction of the county court judge either

- (a) that, having regard to all circumstances, it is probable that he would, but for the continuing effects of his injury, be able to obtain work in the same grade in the same class of employment as before the accident, or,
- (b) that his failure to obtain employment is a consequence wholly or mainly of the injury, he will be entitled to an order from the judge that his incapacity is to be treated as total incapacity resulting from injury. This order will be made for such a period and subject to conditions as may be provided in the Order. No Order, however, to be made under this provision unless the workman satisfies the judge that he has taken all reasonable steps to obtain employment; and every such Order will cease to be in force if the workman receives Unemployment benefit (§ 9 amended by 21 & 22 Geo. V, c. 18 (1), 1931, § 1 (1)-(2)).

These provisions, and those of the Act of 1931, were intended (see p. 258) to assist the workman who had 'recovered' but was unable to find employment, but the general question remains one of great difficulty and acute controversy in its psychological, medical, and social aspects. It has recently been the object of a careful departmental inquiry.<sup>2</sup> We shall deal with it in our second volume as part of the whole problem of medical procedure, from which it cannot be separated. The Holman Gregory Committee's recommendations as to 'review' in the case of workmen under 21 were accepted in part and were further extended by the Workmen's Compensation Act, 1925 (§ 11 (2)). An injured workman who at the time of the accident is under 21 years of age and has not reached his full earning capacity may, six months after the accident, apply for an increase of weekly payments on the basis of what he would probably have been earning if he had remained uninjured, *provided that his application for review is made before or within six months after reaching the age of 21*. If he makes good his claim the weekly payment may be increased accordingly.

Compensation Act, 1931 (see enumeration of new legislation on p. 238), but re-enacted in an amended form and substituted for the former subsection.

<sup>1</sup> 'Employment of a certain kind' may cover his former employment. Where a miner who had lost the sight of his right eye in an accident recovered sufficiently to be fit to resume his former employment but failed to obtain any work, and proved his failure was mainly a consequence of the injury, it was held by the House of Lords that the case was covered by the provision. Cf. Home Office Memorandum, loc. cit., p. 14, and Willis, loc. cit., p. 260.

<sup>2</sup> *Report of Departmental Committee on certain Questions arising under the Workmen's Compensation Acts, 1938*, pp. 49 ff.; the Report will be quoted by us as *Stewart Committee Report*. The value and weight attaching to it has been lessened by the fact that all the evidence given to the Committee has been withheld from publication.

From the point of view of the workman this is an improvement over the provisions of the Act of 1906 (but see note on p. 256).

*Lump-sum settlements.* We have to record, with regret, that the basic difficulties in this regard remain substantially unchanged. Nor can we find in the somewhat half-hearted and jejune recommendations of the Stewart Committee anything to justify the view that substantial improvement is possible within the existing framework. Both the Committee of 1904 and the Holman Gregory Committee favoured the retention of the lump-sum payment—as a right of the employer—but failed entirely to devise special safeguards for cases in which it might be harmful to the workmen. Both committees desired to strengthen the powers of those responsible for the registration of such agreements, but suggested no new basis or guiding principle.

The Holman Gregory Committee urged that every agreement with the employer to accept a lump sum under the Act should be subject to the approval of the County Court Registrar<sup>1</sup>—a recommendation which, if adopted, would have had a far-reaching effect. The Government Bill of 1923 left the law unchanged.<sup>2</sup> In the absence of expressed or implied terms to the contrary, an agreement between a workman and his employers is not conditional upon its being recorded,<sup>3</sup> though agreements as to the redemption of weekly payments remain invalid if not registered (§ 25 (1)). The main recommendation of the Holman Gregory Committee was, in fact, rejected. The point was not even discussed in the debates on the matter in the House of Commons. It will be remembered that a gross evasion of the meaning of the law still existed when the Holman Gregory Report was published, as employers had taken advantage of certain interpretations of the law whereby this 'invalidity' section was not applicable if there had been no weekly payments at all.<sup>4</sup> It was ultimately decided by the House of Lords in 1923 and 1924 that an agreement whereby the workman gives up his right to weekly payment under the Act is void, and the only way by which an employer, apart from a certified scheme, can avoid further liability under the Act is by recording the agreement.<sup>5</sup> It is, however, necessary to remind the reader that the mere 'invalidity' of such settlements is not a complete safeguard to the workman; His Honour Sir Edward Bray told the Holman Gregory Committee<sup>6</sup> that 'even where the agreement ought

<sup>1</sup> This fact is not recorded by the *Stewart Committee Report* of 1938, p. 86. Here the reader is left with the impression that the *Holman Gregory Report* merely made recommendations as regards the procedure of registration and its provisions.

<sup>2</sup> §§ 23-35.

<sup>3</sup> For details cf. Willis, loc. cit., p. 432.

<sup>4</sup> Cf. *Ryan v. Hartley*, [1912] 2 K.B. 150.

<sup>5</sup> *Russell v. Rudd*. Cf. Willis, loc. cit., pp. 433-4.

<sup>6</sup> Cf. *Evidence*, A. 15037.

to be recorded, the insurance companies frequently prefer to run the risk and refrain from an application to record it in order to avoid the interference of the judges', and he mentioned a judge who, in fact, suggested that 'the agreement should be *illegal* unless recorded'.

The Stewart Committee observe, with a gentle moderation which betokens their desire to secure signatures to a unanimous report, that 'a few' witnesses 'were not satisfied that this provision of the Act afforded an adequate safeguard against improper settlements'; and were disposed to demand that 'there should be a heavy fine in proved cases of failure, and to insist that all lump sum payments, however small, which in fact amounted to settlements, should be brought under this arrangement'.<sup>1</sup> Invalidity of agreements before the law has not always prevented such agreements, just as the fact that many industrial combinations knew that their arrangements might be held to be 'in restraint of trade' did not prevent the development of industrial combination. The difference between invalidity, as the 1925 Act provides, and illegality should not be overlooked.

*'Composition' agreements.* An important change was here made by Mr. Thomas's Bill and embodied in the Government Bill. Such agreements relate to cases in which, for one reason or another, a person against whom a claim for compensation has been made disputes his liability to pay but declares his willingness to pay some specified sum to the claimant. We have already described (p. 208) the dangers latent in such arrangements. Under the 1906 Act, when an agreement for a lump-sum settlement was tendered for registration it could be dealt with only on the basis that liability was admitted. Now, if liability to pay compensation is disputed, the person alleged to be liable may agree that, in consideration of the payment of a lump sum, a claim for compensation may be precluded subject to the agreement being registered as if it were an agreement for the redemption of weekly payment (§ 25 (3)).

The 1923 Bill added here a provision which the Holman Gregory Committee had not envisaged. The application of the 'invalidity' provision to non-recorded composition agreements doubtless did something to protect the injured workman, as, when the adequacy or inadequacy of the lump sum is being investigated, regard must be had to the question of whether or not liability to pay compensation is doubtful (§ 25 (4)), but the position is not fully covered. The recommended prohibition of compulsory redemption of weekly payments

<sup>1</sup> Cf. *Stewart Committee Report*, pp. 91-2. The names of the witnesses were suppressed by the Committee, and it is not possible to form any opinion as to the weight which should attach to them; there is nothing to show that their evidence was rebutted. There are precedents in the Factory Acts for such penalties.

in the case of a workman under 21 years of age was also embodied in the new legislation and the position of young injured workmen thus improved.<sup>1</sup>

*Registration and the County Courts.* The Bill of 1923 was primarily concerned with those cases where agreements for commutation and redemption were to be recorded in a registered Memorandum by the Registrar of the County Court in England or the Sheriff Substitute in Scotland. Following the recommendations of the Holman Gregory Committee, it sought to increase the powers of registrars and county court judges under the Act of 1906, which empowered registrars to refuse registration under certain conditions. The Holman Gregory Committee recommended<sup>2</sup> that 'every agreement by a workman with his employer to accept a lump sum in satisfaction of a legal liability under the Act, acceptance of which would preclude him from claiming under the Act in respect of any accident, should be subject to the approval of the County Court Registrar, who should have power to refuse to record the agreement on any grounds he might consider sufficient and upon such refusal should refer the agreement to the Judge'. The Bill did not embody this provision, but the powers of the registrar, and of the judge, on applications to register lump-sum agreements were extended.<sup>3</sup> Of these powers the most important, following mainly the recommendations of the Holman Gregory Committee, are:

- (1) the registrar, or the judge, to have power to require either party to the agreement to furnish him, either orally or in writing, with any information he might consider necessary, and to require the attendance of any of the parties to the agreement before him. When the information as to the workman's condition appears to him to be insufficient or conflicting, he may require a report from a medical referee as to the workman's condition;
- (2) if a medical referee reports that the prospects of the workman's recovery from incapacity cannot as yet be determined, the registrar or, on appeal, the judge may refuse to record the memorandum;

<sup>1</sup> Under the Act of 1906 the employer, in the case of infants, could apply to redeem the weekly payments based upon permanent incapacity after payments had been made for six months, while an infant could not apply for the review of weekly payments (based on the proviso to Sched. I (16) ) until twelve months had elapsed since the date of the accident. Consequently by applying to redeem during this twelve months the employer, in a case of permanent incapacity, could redeem on the basis of a weekly payment which might have been much less than the workman would have been entitled to at the end of twelve months. This was now altered. Cf. for further particulars Willis, loc. cit., p. 349.

<sup>2</sup> Cf. *Report*, p. 55.

<sup>3</sup> By § 12 of the Act of 1923 reproduced in § 23 (3-7) of the Act of 1925.

- (3) any lump-sum agreement must disclose the costs of solicitors; if the registrar thinks them excessive, they must be submitted to him for taxation;
- (4) Approved Societies or committees administering sickness or disablement benefit under the National Health Insurance Act, 1924, are entitled to send to the registrar objections to the registration of lump-sum agreements. If attendance of any of the parties to the agreement is required, they are entitled to appear at the hearing before the registrar or the judge.

These new regulations collectively constituted, at least in theory, a valuable legal shield against inequitable settlements. Insurance companies, rather than employers, did what they could to oppose their embodiment in statutory form. Mr. Guthrie, for example, in a Memorandum annexed to the Holman Gregory Report took the strongest exception to the idea of interfering with composition agreements (see p. 209) which the later legislation accepted. Although it had been made clear to the Committee that workmen were persuaded to accept such settlements by being induced to believe that their claim was disputed and doubtful, and that they would do better to accept a small sum than to claim a larger one, Mr. Guthrie held this to be 'an unwarrantable interference with the liberty of the workman and employer alike, and would prohibit them from compromising doubtful claims without submitting particulars to the authorities and obtaining sanction'.<sup>1</sup> Having regard to this opposition, and to the influence it was in a position to exercise in many directions, it would not be fair to under-estimate or belittle the efforts of Mr. J. H. Thomas and his colleagues to strengthen the powers of registrars and judges. This, however, does not mean that the regulations provided by the new legislation have proved to be fully satisfactory or sufficient, particularly in Scotland.<sup>2</sup> The Stewart Committee recorded that they had received a lot of evidence as to what is actually done at present in England, and as to what, in the opinion of the witnesses, should be done in the matter. Broadly, the result is that while there are Registrars in England who make the most careful enquiries, there are others whose enquiries fall short of what is necessary; and the result is, lack of uniformity in practice.<sup>3</sup>

The Committee might have added that the effects of this lack of uniformity are felt in practice almost exclusively by injured workmen. This is the almost inevitable outcome of the grant of such wide discretionary powers. The position of registrars and county court judges in regard to lump-sum settlements may serve as an illustration.

<sup>1</sup> Cf. *Report*, p. 76, and § 5 (3) of the 1925 Act.

<sup>2</sup> Cf. Willis, loc. cit., p. 436, also *Stewart Committee Report*, 1936, p. 87.

<sup>3</sup> Cf. *Stewart Committee Report*, p. 98.

In both instances,<sup>1</sup> as a result of changes introduced by the Bill of 1923, the judgement of medical authorities has become of increasing importance. Formerly both parties had to concur in the application for reference to a medical referee. Under § 19 (2) of the 1925 Act, recourse to a medical referee may be had by both parties or, subject to certain restrictions, by one of them only. Under the Act of 1906 it was left to the sole discretion of the judge to summon a medical assessor; to-day, on certain conditions, either party has the right to require the presence of a medical referee acting as assessor.<sup>2</sup> The Bill of 1923 went beyond the recommendations of the Holman Gregory Committee, giving power to the judge to withdraw a case from the referee if the medical issues involved should be serious. This provision<sup>3</sup> was inserted in order to prevent medical opinion from replacing judicial determination of the issue. The point was particularly stressed on third reading of the Bill by the Solicitor-General, Sir Thomas Inskip, in replying to a long and lively debate<sup>4</sup> on the respective powers of medical referees and county court judges.

The Stewart Report shows that the changes made did not meet the need: since 1923 the conflict of medical opinion upon judicial issues has become more marked and has evoked strong expressions of feeling. Here again the outstanding deficiencies of the system at the present day are traceable largely to the failure of the government in 1923 to give full effect to the cautious and conservative recommendations of the Holman Gregory Committee, supported as they were by overwhelming evidence.<sup>5</sup> Indeed, had Mr. J. H. Thomas's Bill, in its original form, become law we should not now be faced with the demand for fresh legislation. The Committee's advocacy of whole-time medical officers, for example, was rejected by the framers of the Bill of 1923 merely because it would have meant a departure from the fundamental principles of the whole structure of Workmen's Compensation in England, which was not to be changed. So things remained more or less as they were. Fifteen years later the Stewart Committee recorded their view that 'there are grounds for complaints on certain points', that 'there is strong feeling against an individual Medical Referee having the power to give a conclusive decision', that, further, 'in certain areas there is a lack of confidence in the Medical Referees or in some of them and, in many cases, a

<sup>1</sup> Cf. § 23 (3), § 23 (6) and (7), § 25 (4).

<sup>2</sup> Cf. Sched. I, 5.

<sup>3</sup> Cf. § 19 (2), second para.

<sup>4</sup> *Debates H.C.*, 1923, vol. clxviii, pp. 232-50.

<sup>5</sup> Cf. *Holman Gregory Report*, pp. 28-9; compare with this the few recommendations on p. 73.

suspicion of bias'.<sup>1</sup> Stronger language could scarcely be used in the unanimous Report of a Departmental Committee on which officials predominated.

These, then, were the principal amendments introduced by the Bill of 1923 which, in due course, became an Act and was shortly afterwards merged in the Consolidating Act of 1925. The Holman Gregory Committee recommended that the present system should continue. The government saw to it that their advice was acted on by the legislature and that no recommendation of the Committee which might have introduced any new principles should find its way to the Statute Book. The adoption of compulsory insurance (though not under centralized state control), the appointment of a commissioner who might have been instrumental in securing a more uniform administration of the law, the appointment of whole-time medical officers, which might have led eventually to closer co-ordination of Workmen's Compensation with the National Health Services—these and other recommendations of the Holman Gregory Committee remained entirely outside the new Act, which, in fact, settled nothing. Workmen's Compensation remained a social grievance, espoused unfortunately by one party only, which the passage of the years served only to sharpen, and reform of Workmen's Compensation became a hardy annual, to be raised afresh in every session through the medium of private members' Bills drafted in Transport House without the expert assistance available to ministers.

When the Bill of 1923 was read a third time in the Commons the Labour Party made it clear that it did not embody what they regarded as the minimum of justice to injured workmen and that they did not accept it as a solution or even a workable compromise: it was, said Mr. T. Shaw,<sup>2</sup> 'a woful disappointment'. Their spokesmen resented the fact that three years were allowed to elapse between the publication of the Holman Gregory Report and the introduction of amending legislation and that, even then, it was left to a private member who had been favoured by the chance of the Ballot Box to introduce, on his own responsibility, a measure of reform subject to all the handicaps of private members' Bills,<sup>3</sup> discussion of which is limited to half-empty houses on Fridays, when the House only sits for five hours.

In 1924 the Labour Party introduced an amending Bill, sponsored

<sup>1</sup> Cf. *Stewart Committee Report*, pp. 72 and 110.

<sup>2</sup> *Debates H.C.*, vol. clxviii, pp. 305-28. 'We are not satisfied with the Bill' (Mr. Smillie); *ibid.*, Mr. T. Shaw (p. 305): 'We regard this Bill as most unsatisfactory'; *ibid.*, p. 307: 'We are wofully disappointed with the Bill because we had every right to expect a revision in favour of the workers.'

<sup>3</sup> See also *Committee on Compulsory Insurance, 1936, Evidence*, Q. 1688.

by Mr. Cape, who had been successful in the Ballot: it was defeated on an amendment declaring that 'no useful purpose would be served by reopening the matter after such a short interval'. The Under-Secretary of State for Home Affairs urged the House to 'give the Act of 1923 a chance. Let us watch its operation, and, if necessary, we can later amend it'<sup>1</sup>—though in point of fact the Home Office had not, and still has not, the power to obtain the requisite medical and statistical information which alone would enable it to watch the operation of the Act with the eye of discrimination.

The Stewart Committee, appointed in 1936, sat for over two years: its report did little more than restate the problems which had confronted its predecessors. Once appointed, however, its existence was urged as an excuse for refusing a second reading to amending legislation.

Just as the weekly toll of deaths on the roads spread widely over the United Kingdom or the death below ground of one hundred men in a remote mining area attract far less attention than a single accident in London involving one-tenth as many persons, so the grievances of widely distributed victims of industry, only a minority of whom are trade unionists, find a less ready hearing than those of well-organized bodies, such as spinsters or civil servants. In the words of Professor J. H. Clapham, 'It is curious to note how often a whole generation slides by while some part of British social legislation is being made as nearly as possible watertight.'<sup>2</sup>

Those who regard the parliamentary system as the best machinery for remedying social evils will be the first to admit that in the matter of Workmen's Compensation it has failed, largely because Parliament failed, in 1923, to appoint one man—the Workmen's Compensation Commissioner—to be its remembrancer.

*Eppur si muove.* Something has nevertheless been accomplished, as our next chapter will show.

### *Appendix to Chapter XIII*

#### AMENDMENTS PROPOSED TO THE BILL OF 1923

Of the various amendments to the Bill of 1923 proposed but rejected in Standing Committee or on Report the following are the most important. It is of interest to note that several of them give legislative shape to proposals which, fifteen years later, command general acceptance.

For convenience of reference they are here shown in heavy type as amendments

<sup>1</sup> *Debates H.C.*, vol. clxviii, col. 1299.

<sup>2</sup> *An Economic History of Modern Britain*, 1938, p. 433.

to the Act of 1925, the words which it was proposed to omit being shown in italic type, in brackets.

PART I  
COMPENSATION FOR INJURIES

*Right to Compensation*

1. (2) For the purposes of this Act, an accident (*resulting in the death or serious and permanent disablement of*) causing personal injury to a workman shall be deemed to arise out of and in the course of his employment, notwithstanding that the workman was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his employer, if such act was done by the workman for the purposes of and in connexion with his employer's trade or business.

Alternatively

(2) For the purposes of this Act, an accident resulting in the death or disablement causing substantial and permanent reduction of earning capacity (of a workman, &c.).

*Amount of Compensation*

8. (3) The amount of the children's allowance shall be calculated in accordance with the following rules:

(i) If both the widow or other member of the workman's family and such child or children as aforesaid were all wholly dependent on the workman's earnings, the children's allowance shall in respect of each such child be a sum equal to *twenty (fifteen)* per cent. of the amount arrived at by multiplying the average weekly earnings of the workman, or where such earnings are less than one pound, then by multiplying one pound, or where such earnings exceed two pounds then by multiplying two pounds, by the number of weeks in the period between the death of the workman and the date when the child will attain the age of fifteen, fractions of a week being disregarded.

*Note.* The Bill as originally drafted provided for 10 per cent.

At the end of this section it was proposed to add:

'Provided also that payments shall be made under this section in respect of a child over the age of fifteen if and so long as such child is receiving full-time instruction at any university, college, school, or other educational establishment or is serving a period of apprenticeship.'

Section 9 (1) (c) would read as follows:

'The weekly payment shall in no case exceed (*thirty*) fifty shillings.'

Section 9 (2) (i) would read as follows:

'The rules for calculating the weekly payment in the case of total incapacity shall be (i) the weekly payment shall subject to rule (ii) be a sum equal to the full weekly wage earned by the workman in a normal period.'

Alternatively Section 9 (2) (1) would read as follows:

'The weekly payments shall, subject to rule (ii), be a sum not exceeding (50) 66½ per cent. . . .'

Section 9 (1) would carry an additional clause as follows:

'In the case of partial incapacity the weekly payment shall be paid and continued until such time as the workman has fully recovered from the effects of the accident or suitable employment or business is obtained by or secured for him.'

Section 12 would read as follows:

12. An employer shall not be entitled otherwise than in pursuance of an agreement or arbitration to end or diminish a weekly payment except in the following cases:

- (1) where a workman in receipt of a weekly payment in respect of total incapacity has actually returned to work;
- (2) where the weekly earnings calculated in accordance with the provisions of this Act of a workman in receipt of a weekly payment in respect of partial incapacity have actually been increased;
- (3) where the medical practitioner who has examined the workman under section eighteen of this Act has certified that the workman has wholly or partially recovered, or that the incapacity is no longer due in whole or in part to the accident, and a copy of the certificate (which shall set out the grounds of the opinion of the medical practitioner) together with notice of the intention of the employer at the expiration of (*ten clear days*) **two weeks** from the date of the service of the notice to end the weekly payment, or to diminish it by such amount as is stated in the notice, has been served by the employer upon the workman.

Alternatively, omit subsection (2).

*Note.* The Bill as originally drafted provided for one week's notice.

The following subsection would be added to Section 12:

- (4) 'Nothing in this section shall authorize an employer to end or diminish a weekly payment until he has shown that work of the kind suitable to the alleged incapacity for work of the workman is normally available in the district, or if a workman unfitted to resume the occupation in which he was engaged previous to the accident is undergoing a course of training for some other occupation until that course of training is completed and the employer has shown that work of the kind for which the workman has been so trained is normally available in the district.'

In Section 19 (2) for the present reference to *a medical referee* would be substituted a reference to **a board of medical referees**.

Alternatively, the following words would be added:

'and such referee shall not be acting or have acted as medical adviser to any employer, body of employers, or employers' indemnity society.'

## PART II

## APPLICATION TO CERTAIN INDUSTRIAL DISEASES

Section 48 (1) (iii) would read as follows:

(1) Where

(iii) The death or total or partial incapacity for work results from any such disease—  
and the disease is due to the nature of any employment in which the workman was employed at any time within the (*twelve months*) **two years** previous to the date of the disablement, &c.

## THIRD SCHEDULE

The following diseases would be added to those scheduled:

(a) Phthisis produced by dust or other irritant.  
(b) Any disease or affliction of the eye attributable to or aggravated by the employment.

**Supplementary note (see pp. 246-7)**

The restriction on applications for review by workmen injured when under 21 has caused much difficulty and seems pointless. If an injured lad is given a light job, and is paid the wages he would have earned if uninjured, he cannot claim compensation. That is not unfair. But if he loses his light job after he is 21½ years old he loses for ever the right to base compensation on any higher pre-accident earnings than his wages when a lad before his accident. It is sometimes, but by no means always, possible for an expert legal adviser to overcome this difficulty, which should certainly be dealt with in any future legislation.

## CHAPTER XIV

### FURTHER LEGISLATIVE MEASURES SINCE 1923

‘The argument against government interference, founded on the maxim that individuals are the best judges of their own interests, cannot apply to the very large class of cases in which those acts of individuals, with which the government claims to interfere, are not done by those individuals for their own interest, but for the interest of other people.’

J. S. MILL, *Principles of Economics*, Bk. V, chap. xi. 13.

WE have already referred to the Acts of 1926 and of 1931; the former dealt on progressive and practical lines with persons under 21 years of age and need not be treated in detail. The Act of 1931 and the Workmen’s Compensation (Coal Mines) Act, 1934, which we shall hereafter refer to as the Nicholson Act, deserve further discussion. The Act of 1931 dealt with those workmen who have so far recovered from the injury as to be fit for employment, but have failed to find employment. § 9 (4) of the Act of 1925 (§ 16 of 1923) had led to disappointment. From 1928 onwards several private members introduced Bills designed to remedy proved defects. When in 1930 the matter was, for the third time in five years, brought before the House, Sir Walter Greaves-Lord, K.C., emphasized<sup>1</sup> that it was commonly assumed in 1923 ‘that a man should be compensated within the principles of the Act, where lack of employment could be said to be the result of his injury’. But, once more, a judicial decision had ‘cut down materially what had been everybody’s idea of the scope of the Act’. The matter arose from the interpretation of the words ‘able to earn’. Did these words mean that the workman who had ‘so far recovered’ was physically fit to take up some work again, or that he should actually find some work? In the latter case his inability to find work might be a consequence of the state of the labour market. As early as 1909 the Court of Appeal had decided that such inability was outside the scope of Workmen’s Compensation, and in the case of *Bevan v. Nixon’s Navigation Company* (1928) the House of Lords not only confirmed the view so expressed in the Cardiff case (1911), but held this principle to be implicit in § 9 (4) of the Act of 1925.

The Bill which was passed on April 24th 1931 amended the law by enacting that the judge should order the workman’s incapacity to be treated as total incapacity if he has failed to obtain employment and if it should appear that, having regard to all circumstances, it is probable that the workman would, but for the continuing effects

<sup>1</sup> Cf. *Debates H.C.*, Nov. 29th 1930, vol. ccxxxii, and April 24th 1931, vol. ccxli. The Bill was introduced by Mr. G. Hirst.

of his injury, be able to obtain work in the same grade or class of employment as before the accident, or that his failure to obtain employment is a consequence, wholly or mainly, of the injury. The Act of 1931 did not at first fulfil the intentions of its promoters, for it was held by the Courts that the workman must in all cases prove that he had taken ALL reasonable steps to get employment, a requirement which it was found very difficult to fulfil to the satisfaction of some County Court Judges. In 1938, however, the House of Lords held, in *Ingham v. Barstow*, that it is for the employer to prove that the workman had *not* taken all reasonable steps. Thus once more, after seven long years, the House of Lords found means of reconciling the letter of the law with justice and with the plain intention of Parliament, long frustrated in the lower Courts.

Omitting, at this stage of our inquiry, the Workmen's Compensation (Transfer of Funds) Act, 1927, and the effects of the Companies Act of 1929 upon our subject, there remain two important matters in regard to which progress has been achieved since 1925, viz. (1) the Nicholson Act, a private member's measure entitled Workmen's Compensation (Coal Mines) Act, 1934, which embodied for the first time, in English legislation, the principle of compulsory insurance by organized bodies; and (2) the institution of compulsory schemes for the prevention, treatment, and compensation to sufferers from certain industrial diseases, on a basis hitherto foreign to British Workmen's Compensation Law.

The Act of 1934 gave for the first time statutory effect in one branch of industry, viz. coal-mining, to the principle of compulsory insurance, which, when first raised before the Farrer Committee and later before the Holman Gregory Committee, was, in England, in this particular sphere of social service, a comparatively new idea and rejected accordingly. If, however, the evidence in favour of compulsion had been accorded proper weight the Holman Gregory Committee would not have restricted itself to a lukewarm proposal mainly directed to compel small employers to insure. The coal-mining industry was not at that time singled out as an example where cases of bankruptcy of employers might happen and where the risk of loss to the workmen might be particularly great owing to the high percentage of accidents in this sector of industrial occupation. Mr. Frank Hall, giving evidence for the Miners' Federation of Great Britain, was neither questioned on the point of failures of employers to meet their liabilities, nor had he apparently intended to produce evidence in this regard.<sup>1</sup> Indeed, he stated that, speaking generally, he was not much in favour of state administration. There is little indication that the Miners'

<sup>1</sup> Cf. *Holman Gregory Report*, pp. 104-8, and Q. 2357.

Federation was fully alive to the full extent of the distressing realities of the situation as set forth in the debates in 1934 on Mr. Nicholson's Bill, which contrasted sharply with the complacent admission of the Holman Gregory Committee that 'cases arise where hardship occurs by the loss of compensation'.<sup>1</sup> Sir W. Greaves-Lord, K.C.,<sup>2</sup> told the House:

To any one who has seen the terrible difficulties and the terrible distress brought about by the conditions of affairs which the Bill remedies, the fact that this Bill is going through must be an occasion for rejoicing indeed. One need not in any way say very much about the difficulties beyond the fact that some of the conditions were absolutely a scandal to the community.

In moving the second reading Mr. Godfrey Nicholson, who represented a mining constituency (Morpeth) as a Conservative, explained that the Bill was designed 'to put an end to a definite scandal in the mining industry . . . the bankruptcy of collieries, which sometimes leaves the workmen who are in receipt of compensation payments high and dry, and with no other recourse than Poor Law relief'.<sup>3</sup> This 'scandal' was very well known to the Home Office and had been referred to occasionally in debates on Workmen's Compensation, as in 1923, though it had been virtually ignored by the Holman Gregory Committee. Two Royal Commissions on the mining industry under Lord Sankey and Sir H. Samuel respectively had passed it by. It had been mentioned in two annual Reports of the Home Office on Workmen's Compensation, but nothing had been done. Mr. Nicholson regretted the absence of reliable statistics. He drew attention to the fact that the percentage of accidents and injuries (including scheduled diseases) is particularly great in mining.<sup>4</sup> 'In the six industries other than mines the proportion that the number of compensation cases bears to the total number of persons employed is 3·38 per cent., whereas in mining it is 21·2 per cent., which is staggering.'<sup>5</sup> He also mentioned: 'the total expenditure of the industry on compensation, divided by the number of people employed in mining, is 68s. 11d.; in the six other great industries it is 9s. 10d.' He declared: 'in the last two years, South Wales miners have lost (by the default of employers) £140,000 and Lancashire miners have lost £36,000', and called attention to the frequent and distressing cases of delay of compensation payments owing to prolonged negotiations

<sup>1</sup> Cf. *Report*, p. 18.

<sup>2</sup> Cf. Third Reading, Apr. 20th 1934, p. 1291.

<sup>3</sup> Cf. *Debates*, vol. cclxxvii (1933-4), p. 1430.

<sup>4</sup> Cf. *Workm. Comp. Statistics*, 1937, p. 7.

<sup>5</sup> *Debates H.C.*, Mar. 2nd 1934, vol. cclxxxvi, col. 1431.

with uninsured and bankrupt employers. His figures were not challenged and his general thesis received support from both sides of the House; many members quoted individual cases of gross injustice and hardship, such as those unavailingly cited by Judge Ruegg before the Holman Gregory Committee (see Chap. XI, p. 219).

The debate revealed the failure, on a large scale, of the safeguards relied upon for over half a century—by reason of defects which the Holman Gregory Committee had been appointed to investigate and had failed to deal with, defects of which the Home Office must have been well aware but which it had taken no steps whatever to remedy until it became clear from the Second Reading Debate on a Friday afternoon that official lethargy would no longer be tolerated. The first instinct of the department was to remit the whole question to a departmental committee for leisurely investigation, or, as an alternative, to avoid the necessity for compulsory legislation by following the advice of the Mining Association, viz.

1. to urge on mining employers either to join a mutual association, or
2. to insure in a private insurance company, or
3. to set aside reserves in the hands of trustees ‘in a model trust deed’.<sup>1</sup>

Neither alternative was acceptable; in face of Mr. Nicholson’s ‘embarrassing pertinacity’, the Under-Secretary of State for Home Affairs (Mr. Douglas Hacking) announced that the Government felt that they would incur a grave responsibility if they opposed the Bill in face of the pressure of the majority of Members of the House. Therefore, he declared, the Government, in spite of its appreciation of the Mining Association’s recommendation, would ‘co-operate with the promoters of the Bill’. He mentioned incidentally that the Home Secretary had for some time been in communication with the Lord Chancellor on the subject of the training and rehabilitation of injured men and on the distribution of compensation, including the payment into court of lump-sum compensation. This was in 1934. The departmental conversations with the Lord Chancellor must have proved singularly unfruitful, for in the following year two committees were appointed which, two years later, had not yet reported.

The Parliamentary Secretary also mentioned (col. 1480) that he was authorized by the Board of Trade to say that the government were and had for some time been contemplating the introduction of a Bill dealing with insurance business generally, and the question of bringing mutual associations within the scope of the Bill would be carefully considered. No such Bill, which would doubtless have been based upon the findings of the Clauson Committee, has yet seen the

<sup>1</sup> Cf. *Debates H.C.*, Mar. 2nd 1934, vol. cclxxvi, p. 1478.

light, though the President of the Board of Trade has announced that the report of the Cassel Committee on compulsory insurance is under official consideration with a view to legislation on the basis of the recommendations contained therein.<sup>1</sup>

Mr. Nicholson's Bill received the Royal Assent on June 22nd 1934 under the title 'Workmen's Compensation (Coal Mines)', and came into force on Jan. 1st 1935. Its passage through the bottle-neck of Parliament is a milestone in the history of Workmen's Compensation in England. It ran contrary to the views expressed in a leading article in the *Economist* dealing with the Act of 1923:<sup>2</sup> 'Logically, insurance should be made compulsory and be under strict State supervision; we who have learned that strict logic makes a sorry mess of human affairs leave insurance voluntary but, by an agreement with the insurance offices, make it so attractive that employers have little excuse for carrying their liabilities.' The passage is strangely reminiscent of the criticism of the same journal, some forty years earlier, of the very principle of Workmen's Compensation (see p. 40). The main features of the Act of 1934, which has worked well in that no litigation based upon it has come before the courts, were: (1) Insurance of owners of coal-mines against liability to their workmen was made compulsory. Subject to certain exceptions (to be dealt with in our second volume), no mine-owner may employ any workman for the purpose of his undertaking unless there is in force either

- (a) a contract of insurance subscribed by an authorized insurer, which insures the owner against all liability under the Principal Act, or
- (b) an instrument (called 'compensation trust'<sup>3</sup> in the Act) securing by means of a special trust fund the discharge of all the owner's liability under the principal Workmen's Compensation Acts, including legal obligations under silicosis schemes.

(2) The term 'authorized insurer' was defined as an insurance company or an underwriter complying with the requirement of the Assurance Companies Act, 1909, with respect to deposits, and a mutual indemnity association which, if formed after Dec. 31st 1933, has deposited the sum of £20,000 with the Supreme Court. (Mutual associations are, of course, responsible for by far the greater part of compensation insurance in the coal-mining industry.) A special

<sup>1</sup> *Debates H.C.*, June 21st 1938, col. 879.      <sup>2</sup> Cf. *Economist* of Nov. 24th 1923.

<sup>3</sup> At the beginning of the trust, and thereafter annually, the trustees made a 'qualified actuary estimate of the capital sum necessary to pay the compensation charges which will, in his estimation, have to be paid by the undertaking during the coming year. This sum must be paid into the Trust *in advance*'. This is the basis of the scheme. See para. 5 of schedule to Act for details; also para. 6.

Schedule of the Act relates to the form, administration, and provisions of compensation trusts, on lines resembling, in some respects, the long-established mutual indemnity associations in Germany.

The compulsory principle is there, but indemnity associations, even in the coal-mining industry, have not yet been required to assume the same obligations as insurance companies, in regard to the furnishing of accounts and information, in spite of the express recommendations to this effect of the Holman Gregory and Clauson Committees, to bring these bodies within the scope of the Assurance Companies Act, 1909, a recommendation which has been reiterated in 1936 by the Cassel Report on Compulsory Insurance.<sup>1</sup> The need was, of course, fully recognized, but the inclusion of mutual associations would have overburdened, and might have wrecked, a private member's Bill which was already highly technical, and already taxed the ingenuity and patience of the promoter to the utmost. In any case, he had the assurance of the Government that a Bill to cover mutual associations was in preparation. It has not yet (1938) come before Parliament.

The other field of statutory and administrative reforms of Workmen's Compensation in which advances have recently been made covers those tragic conditions of 'disease' which have attracted growing attention. We have shown how slowly the need and utility of preventive measures, perceived over 200 years ago, was realized. Dr. Purdon wrote in 1872 of wool-carders: 'If a girl gets a card at eighteen her life is generally terminated at thirty.' The statement was doubtless an exaggeration, but the mortality figures in industrial areas in Yorkshire and Lancashire between 1840 and 1880 among children and adolescents alike give a good idea of the immense waste of life involved by ignorance and indifference among a people which had not spared itself expense to repress African slavery and which had set its face against child-labour.<sup>2</sup>

It is a sad commentary upon the much-heralded Physical Fitness movement in Britain that relatively little publicity has been given to the prevention and control of industrial diseases. Much valuable work has unquestionably been done and good results achieved by medical inspectors under the Factory Acts,<sup>3</sup> by the Miners' Welfare Fund, by the Industrial Health Research Board (under the Medical Research Council), and by other official agencies, but disablement

<sup>1</sup> Cf. *Holman Gregory Report*, p. 21; *Clauson Report, Report by the Departmental Committee appointed to inquire and report what amendments are desirable in the Assurance Companies Act, 1909*, Cmd. 2820, 1927, p. xiii. Further: *Report of the Committee on Compulsory Insurance, 1937*, Cmd. 5528, pp. 34 and 44.

<sup>2</sup> Cf. C. R. Pendock, *Observations on Potteries and Removal of Dust*, Stoke-on-Trent, 1913.

<sup>3</sup> Cf. *Report of Chief Inspector of Factories, 1933*, pp. 56-7.

caused by miner's nystagmus (oscillation of the eyeball), by dermatitis caused by dust or liquids, by silicosis and asbestosis, remain high and show as yet little reduction per thousand persons exposed to the risk. Meanwhile fresh processes are being introduced entailing fresh risks. Much has yet to be done to secure the active and intelligent co-operation of workers themselves—on lines now being actively developed in the mining industry: much might be achieved by careful medical examination of prospective entrants into industries in which there is an element of risk from particular diseases and by periodical examination of workers. In both cases the fact that neither the Ministry of Labour nor the Ministry of Health have any responsibility in the matter has probably tended to make the task of the Factories Department more difficult than it would have been had function and not tradition been the guiding principle in the allocation of duties to the various ministries.

Apart altogether from this aspect of our subject, there has been a growing recognition of the impossibility of divorcing the assessment of compensation for industrial diseases from the treatment of the individual case. It is now widely realized that the complicated nature of a disease, its relation to a certain occupation, and the possibility of recurrence may at once lead to dispute, not only on medical but also on legal grounds, necessitating specific regulations and statutory enactments.

Treatment of nystagmus, dermatitis, and silicosis is based partly upon statutory enactments, partly upon particular schemes devised and carried out by the Home Office. The first so-called Refractories Schemes was made under a special Act passed in 1918.<sup>1</sup> A later Act, passed in 1930, extends the provisions relating to silicosis to industries and processes involving exposure to asbestos dust. Silica is widely distributed in nature and occurs as the chief constituent of many rocks; the industries which are chiefly liable to the dangers of this disease are: coal-mining in certain seams; mining and quarrying; drilling and blasting in certain rocks and breaking, crushing, and grinding them; mason's work on sandstone or granite; manufacture of ganister, silica bricks, and other refractory material; breaking, crushing, or grinding of flint; certain processes in the pottery industry; grinding of metals by means of grindstones composed of natural or artificial sandstones; fettling of steel castings, and sand-blasting by

<sup>1</sup> The Workmen's Compensation (Silicosis) Act, 1918, 8 & 9 Geo. V, c. 14: since repealed, see § 47 of the Act of 1925 as amended by the Silicosis and Asbestosis Act, 1930 (20 & 21 Geo. V, c. 29). Silicosis is produced by the action of minute particles of silica dust which have been inhaled in the act of breathing. These particles make their way into the deepest recesses of the lungs, where some of them remain and produce a slow inflammatory process which eventually destroys the lungs.

means of compressed air with quartzose sand or crushed silica rock or flint. Asbestosis resembles silicosis in some ways in its general features of causation and development, but differs from it in some of its clinical and pathological manifestations.<sup>1</sup>

A report on silicosis in Great Britain prepared by E. L. Middleton, H.M. Medical Inspector of Factories, for the International Silicosis Conference at Johannesburg of August 1930, laid bare the heavy risks entailed by this disease. In Sheffield, for instance, where statistics of death are kept very carefully with reference to the occupation, the number of deaths of grinders from pulmonary tuberculosis were 34, 35, 31, 28, and 38 between 1923 and 1927. On the basis of the census of 1921 this gives mortality rates per 1,000 grinders living of 6.9, 7.2, 6.3, 5.7, and 7.8, contrasted with rates amongst all persons over fifteen years of age of 1.2, 1.1, 1.1, 1.0, and 1.0 respectively. To take another example: the standardized mortality of males aged sixty to sixty-five, in certain occupations, given by the Registrar-General in the Decennial Supplement of 1921, showed that the comparative mortality figures for slate-miners and quarriers, compared with 1,000 for all occupied and retired civilian males, for respiratory tuberculosis was 1,594. The same publication stated that the mortality of tin- and copper-miners in Cornwall was excessive; the comparative mortality figure from all causes was  $3\frac{1}{4}$ , and for underground workers  $4\frac{1}{3}$ , times the average; the phthisis death-rate was  $12\frac{1}{2}$  times, and that for respiratory disease 6 times, the normal rate. Deaths from chronic interstitial pneumonia numbered 27 out of the 2,110 underground tin-workers compared with 60 deaths from this cause amongst 912,126 coal-miners.<sup>2</sup>

Compensation in cases where death or disablement is caused by silicosis or silicosis accompanied by tuberculosis contracted during employment is now payable in all industries in which a serious risk of the disease exists. Owing to the nature of the disease, a special compensation procedure, different from the ordinary provisions of the Workmen's Compensation Acts, had to be devised. The following

<sup>1</sup> Cf. for literature: Dr. E. L. Collis, *Industrial Pneumoconiosis with special reference to Dust Phthisis*, H.M. Stationery Office, 1919; Dr. E. L. Middleton, 'A Study of Pulmonary Silicosis', *Journal of Industrial Hygiene*, March 1921; *Report on the International Conference on Silicosis: Johannesburg, August 1930*, International Labour Office, Geneva, 1930; Dr. E. R. A. Merewether in *Tubercle*, Nov. and Dec. 1933 and Jan. 1934, 'A Memorandum of Asbestosis'; further, *First Report of the Departmental Committee on Compensation for Silicosis dealing with the Refractories Industries (Silicosis) Scheme, 1919, 1924*; there are further a number of reports dealing with particular industries in regard to silicosis: for particulars see *Memorandum of the Home Office on Silicosis and Asbestosis, 1935*, p. 14.

<sup>2</sup> Cf. *Report on Silicosis*, Geneva, 1930, pp. 393, 423, and 431.

special Compensation Schemes have been made by the Home Office:

- (1) Refractories Industries (Silicosis) Scheme, 1931 (superseded the Refractories Scheme, 1919).
- (2) Sandstone Industry (Silicosis) Scheme, 1931 (superseded the Sandstone Industry Scheme, 1929).
- (3) Metal-grinding Industries (Silicosis) Scheme, 1931 (superseded that of 1927).
- (4) Various Industries (Silicosis) Schemes, 1931, 1934, and 1935 (the 1931 Scheme superseded the Various Industries Scheme, 1928, as amended by the Order of Dec. 23rd 1930).
- (5) Asbestos Industry (Asbestosis) Scheme, 1931.<sup>1</sup>

The importance of these schemes at this point of our inquiry is that they represent new departures from the legal and administrative organization of Workmen's Compensation in England, including two outstanding innovations, viz. the creation of a General Compensation Fund and the provision of a Medical Board.

As to the General Compensation Fund, we have noted in an earlier chapter that § 8 (7) of the Act of 1906 gave power to the Home Office to bring about a compulsory organization of employers in any industry to which certain provisions relating to industrial diseases were applicable. This power had never been used when, in 1925, it was incorporated into the consolidating Act as § 45. A separate section of the latter Act (§ 47) deals with silicosis, since amended by the Workmen's Compensation Act of 1930 on which the present statutory provisions are resting. This section gives power to the Secretary of State in the case of silicosis and asbestosis to make provision

- (a) for the establishment of a general compensation fund to be administered either through a mutual trade insurance company or society of employers, or in such manner as may be provided by the scheme;
- (b) for requiring employers to subscribe to the fund, and for the recovery of such subscriptions.

This, in other words, means compulsory insurance under a comprehensive unified organization. It has been applied hitherto only to the Refractories Industries and the Sandstone Industry. In sharp contrast to the line taken by the ordinary Workmen's Compensation Law, the liability to pay compensation is not placed on the individual employer but on the fund: insurance is not voluntary but compulsory: the management of the fund is not commercial but official. The circumstances were exceptional, and an exception to the general principle was made accordingly.

The second important innovation in respect of certain 'dust'

<sup>1</sup> Home Office, *Memorandum on Silicosis and Asbestosis*, 1935, p. 15.

diseases, as silicosis and asbestosis in particular, is the formation of Medical Boards. This development was opposed by the Holman Gregory Committee, which relied mainly on the view of Dr. Smith Whitaker, Senior Medical Officer of the Ministry of Health, that Medical Boards would be 'much more costly and not so satisfactory'.<sup>1</sup>

Fourteen years later the Stewart Committee agreed 'that three medical men, carefully selected from a panel, would embody a much wider range of experience than a single Referee; that the opportunity afforded for discussion by the meeting of three doctors would minimize the risk of positive error or the overlooking of relevant facts; and that the considered judgement of the Board would inspire more confidence than the decision of the individual'.<sup>2</sup> The Committee was nevertheless unable to reach a decided (viz. a unanimous) verdict on the merits of Medical Boards. (We may surmise that, in this as in other matters, the need for unanimity has deprived the Report of much value.) In this light, the provisions in the Silicosis and Asbestosis schemes are of particular interest. In the absence of agreement between a workman and his employer, compensation can only be claimed on a certificate given by the Medical Board set up under the Silicosis and Asbestosis (Medical Arrangements) Scheme of April 30th 1931. §§ 3-6 of this scheme regulate the matter of Medical Boards in particular. A Medical Board—to be appointed for the purpose of the Silicosis and Asbestosis Scheme—consisting of specially qualified medical practitioners shall be appointed by the Secretary of State for the purpose of making the medical examinations and reports, and giving the medical certificates required to be made or given by the Medical Board in pursuance of the scheme, Silicosis or Asbestosis, or any compensation scheme made under § 47 of the 1925 Act (see p. 265). The Medical Board consists of a Chief Medical Officer and eight Medical Officers and is divided into four panels of two Medical Officers each, with centres at Bristol, Manchester, Sheffield, and Stoke-on-Trent. We shall consider in our second volume how far this arrangement has been satisfactory, and how far it can suitably replace the system of single referees. It is sufficient to note that it was an innovation, deliberately made, and that it seems to have been amply justified by results.

In concluding this imperfect survey of current developments we may so far anticipate our conclusions as to draw attention to the meagre results which have, in general, been attained, at great cost of money and individual effort, in the development of the system of Workmen's Compensation now in force in this country. Had there

<sup>1</sup> Cf. *Holman Gregory Report*, p. 62.

<sup>2</sup> Cf. *Stewart Committee Report*, pp. 72-3.

been, from the outset, a Workmen's Compensation Commissioner responsible to Parliament through an appropriate Ministry for the operation of the Act and for suggesting needful amendments, as advocated by the Holman Gregory Committee and Mr. J. H. Thomas's Bill, it is not to be doubted that greater progress would have been made. Had the Home Office, or such an official, had the assistance of a Statutory Board with power to make regulations within the framework of a widely drafted Act of Parliament, subject to an affirmative resolution in both Houses, the problems of industrial disease and the growth of vested interests connected with the British system of Workmen's Compensation would have been less intractable. Had the Home Office enjoyed the assistance of a Central or of Regional Advisory Councils to deal with industrial diseases and accidents, such as exist in connexion with the Miners' Welfare Fund, composed of representatives of employers and employed, the scandal which the Act of 1934 was designed to end would never have attained large proportions.

The defects of the existing system, which were apparent to some persons who appeared before the Farrer Committee in 1907, and were universally recognized by all disinterested witnesses before the Holman Gregory Committee in 1919-20, would then have been brought before Parliament, not by the cumbrous machinery of Committees but through the appropriate minister by a commissioner assisted by expert officials with the support of expert advisory councils. The amount of suffering, of physical disability, and of psychological incapacity entailed by the present system could have been vastly reduced, without additional expense to society at large, had it been recognized in 1922 that the principles on which the present system of Workmen's Compensation is based are outworn, and require restating on wholly different lines.

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## **APPENDIXES**

- I. CONTRACTING-OUT SCHEMES.**
- II. A CRITICAL SUMMARY OF WORKMEN'S  
COMPENSATION STATISTICS.**



## APPENDIX I

### *Contracting-out Schemes*

WE have already referred (p. 168) to the absence of any close relationship, whether statutory or practical, between accident prevention and compensation for injuries. The first is regulated by Factory Acts, the second by the Workmen's Compensation Acts. Both are by statute primarily a responsibility of employers.

One of the most unsatisfactory and least explicable features of Workmen's Compensation in this country is the fact that almost no employers, even among the best and the largest, have exercised their right to 'contract out' in order to introduce schemes somewhat more favourable to the workmen than the minimum required by the Act, including contributions by workmen devoted to the provision of additional benefits. Joseph Chamberlain's confidence (see p. 62) was not justified by subsequent results.

Yet it is possible under such a scheme, as four firms have learned by long experience, so closely to link prevention with compensation as to reduce substantially the number of accidents and thus, incidentally, to make it possible to give greater benefits to injured men for the same cost per £100 paid in wages.

The following is a list of contracting-out schemes operative in 1938 for Workmen's Compensation, sanctioned under § 31 (1) of the Act by the Chief Registrar of Friendly Societies as being at least as favourable to the workpeople as the provisions of the Act:

| <i>Title of Scheme</i>  | <i>Number of workmen covered by scheme and adopting it</i> |
|---|--|
| Workmen in Government Establishments (Treasury)                         | 111,137  |
| Great Eastern Railway (L.N.E.R.) Accident Fund (out of 33,465 employed) | 30,156   |
| S. Metropolitan Gas Co.   | 8,830  |
| Another Gas Co. <sup>1</sup>  | 2,740  |
| Shipbuilding firm (A) (2 schemes) <sup>1</sup>                          | 2,675  |
| Shipbuilding firm (B) (2 schemes) <sup>1</sup>                          | 1,347  |
| Woolwich Borough Council (out of 2,277 employed)                        | 549  |
| Bootle Corporation, Liverpool (Fire Brigade only)                       | 32   |
| <i>Salt Union Ltd.<sup>2</sup> Bromsgrove</i>                           | <i>342</i>   |

<sup>1</sup> Names withheld at their request but obtainable from the Chief Registrar.

<sup>2</sup> Will lapse shortly owing to amalgamation of the Company with Imperial Chemical Industries, Ltd., which has no such scheme.

It will be seen that, excluding government employees, only about 46,000 workmen are covered by schemes in active operation, as compared with 65,000 in 1923,<sup>1</sup> and of them 30,156 are employed by the L.N.E.R., 11,570 by two gas companies, and some 4,000 by two shipbuilding firms.

Section 31 (10) of the Act of 1925 empowers the Chief Registrar to make rules to give effect to the provisions of the Act relating to contracting out. No rules have been made under this Act. Those made under the Act of 1906 are still in force<sup>2</sup> but do not appear to fit or to cover the provisions of the Act of 1925, which are more stringent than those of 1906.

*The government scheme of compensation.* This important scheme applies to all workmen in government establishments, subject in every case to their written individual concurrence,<sup>3</sup> which has in no case been withheld. It follows generally the provisions of the Act, but excludes provision for arbitration, decision as to what is reasonable being left to the Treasury. It is not normally applicable to injuries received outside Great Britain.

The following provisions are slightly more generous than those provided by the existing Act (§ 9):

*Payment of Compensation in case of incapacity (Hurt Pay)*

2. Where a workman is incapacitated as the result of an injury (in circumstances which would render compensation payable under the Acts)

<sup>1</sup> In 1923 the average annual contribution per workman was 4s. 1½d., to which the employers added 18s. 11½d. There were 5,092 cases of incapacity from injury, and 26 cases where death resulted from injury. There was thus 1 fatal accident for every 2,200 employees, and 1 case of incapacity for every 11. The average duration of cases of incapacity completed during the year by weekly payments only was 5 weeks; the average cost per case £7 3s. 10d. (Registrar's Report, 1923, Part I.)

<sup>2</sup> Statutory Rules, No. 213, March 1st 1913. See also *Guide Book of the Registry of Friendly Societies*, ed. 1936, Part IV.

<sup>3</sup> Contract by workman that the provisions of the above Scheme shall be substituted for the provisions of the Workmen's Compensation Acts 1925 to 1931.

I, the undersigned, being a workman employed in (Dept. or Dockyard) ..... hereby agree that the provisions of the above Scheme shall be substituted for the provisions of the said Acts, during the continuance of my employment, and I hereby agree to accept the provisions of the said Scheme, as substituted as aforesaid, for myself, my dependants and legal personal representatives and all other persons entitled to compensation or benefits under the provisions of the said Acts, in lieu of the provisions of the said Acts.

Signature of Workman .....

Date .....

Nature of Workman's employment .....

Witness to the

Workman's Signature .....

(i) he shall receive for the period (not to exceed six months), during which he is on the Hurt List on account of the injury, a weekly payment of compensation at the following rates, viz.: If his average weekly earnings do not exceed 25s. . three-quarters of such average weekly earnings;

If his average weekly earnings exceed 25s., but do not exceed 50s., the sum of twelve shillings and sixpence plus one-quarter of such average weekly earnings;

If his average weekly earnings exceed 50s., one-half of such average weekly earnings, subject to a maximum of 50s.

(ii) The workman shall in addition receive whilst he remains in employment by the Crown either (a) free treatment in hospital where hospital accommodation is available to the Department for the purpose, and where the effect of the injury is such as to render hospital treatment proper; or (b) if hospital accommodation is not available, or if the effect of the injury is not such as to render hospital treatment proper, free medical attendance either at his home or at the surgery, as the case may require.

(iii) Any workmen now serving who are entitled under the regulations of the Department to more favourable treatment while on the Hurt List than is provided for above, shall continue to be so entitled, but no workman is to be entitled to compensation both under this Scheme and under any regulation of the Department in respect of the same injury.

The following further clauses are also of importance:

*Limit of time for preferring claims*

9. A claim for compensation for an injury which occurred more than three years before the claim is preferred, and which is not the cause of the applicant's discharge from the service, cannot be entertained unless it is clearly shown that the prospect of obtaining further employment has been diminished in consequence of the injury.

*Payment to trustees*

10. If the Department considers it desirable in the interests of a workman being an infant, or of a workman's dependants, that a trustee or trustees should be appointed to administer for his or their benefit the money awarded as compensation to him or them, the Department may in its discretion appoint a trustee or trustees, and pay the said money to such trustee or trustees to be administered for the benefit of the workman or of the dependants upon such terms and in such manner as the Treasury approve.

*Payment of compensation in the case of mental disability*

11. When a workman, to whom compensation has been awarded under this Scheme, is certified by a justice or a minister of religion and by a medical practitioner to be unable by reason of mental disability to manage his affairs, the Department may pay so much of the compensation as the Department thinks fit to the institution or person having the care of the workman, and may pay the surplus, if any, or such part thereof as the Department thinks fit, for or towards the maintenance and benefits of the dependants of the workman.

*Reference of all questions to the Treasury*

14. All questions, whether as to the right to compensation under this Scheme, or as to the amount thereof, or as to the period during which it is payable, or as to the person or persons to whom it is payable, or otherwise, arising upon the Scheme, shall be decided by the Treasury. For purposes of arriving at a decision the Treasury may make such inquiries and take such statements and medical or other opinions as they may think fit, and shall consider any representations made by or on behalf of the workman or his dependants.

One of the firms of shipbuilders, whose schemes we summarize below, writes as follows on the subject (August 19th 1938):

'The principal advantage of the contracting-out schemes is that the cases receive more personal consideration and attention than when the liability is "insured" against, and the (Accident Fund) Committee is in a position to make special grants of cash or appliances in appropriate cases.'

The rules provide for weekly contributions by workmen and apprentices as follows:

|                                 |     |
|---------------------------------|-----|
| For men . . . . .               | 3d. |
| For apprentices over 18 . . . . | ½d. |
| ,, , under 18 . . . .           | ¼d. |

The rules further provide that

'The Company will contribute in each year to the Accident Fund, a sum equal to four times the amount of the contributions of the Workmen and Apprentices in such year, or such further sums as may be necessary to provide the benefits payable under the scheme, both during its continuance and after its final termination.'

'The administration of the Fund shall be entrusted to a Committee of six Members of whom two shall be appointed by the Company and four by the Workmen. These latter shall retire annually, but shall be eligible for re-election.'

## FATAL ACCIDENTS

(a) If the workman or apprentice leaves any dependants wholly dependent upon his earnings the compensation payable shall be—

|                                    |      |
|------------------------------------|------|
| In the case of men . . . .         | £300 |
| In the case of apprentices . . . . | £250 |

(b) If the workman or apprentice leaves a widow or other member of his family (not being a child under the age of 15 years) wholly or partially dependent on his earnings and also a child or children under the age of 15 years additional compensation shall be paid as follows:—

In the respect of each child under the age of 15 years, a sum equal to fifteen per cent. of the amount arrived at by multiplying his average weekly earnings,

or if his average earnings were less than £1 then by multiplying £1 or if they were more than £2 then by multiplying £2 by the number of weeks between the date of his death and the date when the child will be fifteen.

(c) If he leaves dependants only partially dependent on his earnings there shall be paid such proportion of the compensation mentioned above as will in the opinion of the Committee be reasonable and proportionate to the injury to the said dependants.

(d) Provided that the total compensation payable in respect of any case shall not exceed £600.

£20 to be paid to a representative of the deceased immediately on proof of death; and the balance after deducting any weekly or other payments made prior to the decease of the injured person, in weekly payments or in one or more sums, at such times and in such manner as the Committee may consider best for the interests of the family of the deceased. In the case of no dependants, as construed by the Workmen's Compensation Act, 1925, £20 only shall be paid.

#### NON-FATAL ACCIDENTS

An allowance for men at the rate of 31s. 6d. per ordinary working week.

An allowance for Apprentices of 80 per cent. of their respective rates of wages and not less than 75 per cent. of their average weekly earnings during the previous 12 months.

Such allowances to be made during such period as the injured person is incapacitated from following his employment. After making 26 weekly payments, or earlier if they deem it advisable, the Committee shall consider the case and if they are of opinion that the injured person is permanently incapable of following his usual occupation, and if the insured person is willing, they shall award him such a sum as they think fit, which shall not exceed

|                           |      |
|---------------------------|------|
| For men . . . . .         | £350 |
| For apprentices . . . . . | £100 |

Or, if they are of the opinion that the injured person is permanently disabled from following any occupation, and if the insured person is willing, they shall award him a sum which shall not exceed

|                           |      |
|---------------------------|------|
| For men . . . . .         | £500 |
| For apprentices . . . . . | £300 |

The sum awarded shall be paid in such a manner and at such a time or times as may be agreed between the injured person and the Committee; and the payment of such sum shall bar any further claims upon the fund by the representatives of the injured person, in the event of his decease.

If the injured person is unwilling to accept either of such sums, he shall continue to receive his weekly allowance as aforesaid, either in full or at a reduced rate, which may be determined by the Committee to be proper, regard being had to the wages which he is earning or able to earn in some suitable employment.

The doctor will attend every week at the Factory to examine and report on all accident cases.

## EYE

In view of the special character of an accident entailing the loss of sight in one eye (total or partial disablement not being the effect), all such claims may be met by the payment of £200 for Men and £100 for Apprentices.

Any amount the Committee elect to pay weekly shall be taken into account and deducted from either of the above-stated awards in settling any claim under this clause. In the event of the injured person establishing a claim for partial or total disablement attributable to the same accident, then any sum already paid to him under this Clause shall count as part payment of any award which may become due to him under Rule 5.

No accident shall be considered sufficient to warrant a claim on the Fund which is not sufficiently serious to prevent the injured person from coming to his work for at least three clear days.

Any person intending to claim on the Fund must give notice in writing to the Secretary within three days after the accident, and in case of further delay, the Committee may date the payment from the time of the accident or from three days prior to the receipt of such notice at their discretion. In the case of death claims notice must be served within the statutory period of six months.

In the event of the termination of the scheme, either at the expiration of the period for which it is certified, or by revocation by the Registrar on the application of the Workmen, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the Employer and Workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

Any questions as to the construction, administration, or meaning of the scheme shall be determined by the Committee, whose decision shall be final and conclusive.

#### *Great Eastern Railway Accident Fund.*

This fund dates from January 1908: membership is restricted to G.E.R. staff and new entrants into the G.E. Section of the L.N.E.R. No other railway has any such contracting-out scheme in lieu of the Workmen's Compensation Acts.

*Workmen's contributions* are larger than under any other scheme, viz. 1*d.* per week, the contributions by the Company being those to which they are liable under the Acts.

*Management* of the Fund is in the hands of 6 persons nominated by the Directors and 5 persons nominated by subscribing members.

*Benefits* are as payable under the Acts, but in the case of Total Disablement through injury, payment of full weekly earnings, with a maximum of 30*s.* for the first six months, commences from the date of incapacity.

Under Workmen's Compensation Acts, the first three days are not

payable unless the workman is absent for four weeks or more: the difference between the amount payable under the Workmen's Compensation Acts and from the Accident Fund is borne by the members' contributions.

e.g. (a) Workman earning 24s. per week receives from Accident Fund 24s. per week for first six months, then Workmen's Compensation rate: workman earning 24s. per week under Workmen's Compensation receives 18s.

(b) Workman earning 50s. per week receives from Accident Fund 30s. per week for first six months, then Workmen's Compensation rate: workman earning 50s. per week under the Workmen's Compensation Acts receives 25s. a week.

The balance of the Accident Fund at each re-certification by the Registrar is divided amongst the members, and/or applied in such manner as agreed between the Directors and the men's representatives. The next distribution in respect of the period ended June 30th 1938 will take place shortly.

Part of the surplus funds has in the past been handed over to the Employees' Accident Benevolent Fund, which is a fund controlled by the men's representatives to assist cases of necessity arising out of accident, assisting with the purchase of artificial limbs and payment of ambulance charges, taxi-cab fares, &c., where it is necessary for a workman to travel from his home to hospital for special treatment when he is unable to use a public vehicle.

*The South Metropolitan Gas Company*<sup>1</sup> write of their scheme, which follows somewhat different lines and provides for a joint inquiry by employer and employees into every accident as follows:

'Its outstanding advantages may be summarized as follows:

- (1) The educative value both to the Company and its workpeople as to the causation and prevention of accidents.
- (2) The settlement of accident claims in the friendly and sympathetic atmosphere of the Company's Co-partnership.
- (3) The elimination as far as possible of formal technicalities and litigation.
- (4) Simplicity of administration.'

The jury system (Rule XXIV) is, of course, an integral part of the scheme. The value of this kind of inquiry is obvious:

- (i) It ensures to the workpeople absolute freedom to consider and report on the manner and conditions in which they themselves carry on their work.

<sup>1</sup> The scheme of the other Gas Company follows somewhat similar lines.

(ii) It makes *them* and not the management the judges of ineptitude or carelessness, as the case may be, of their fellow workmen; it is a tribunal consisting of individuals who by their daily experience know just how far it is reasonable or not to expect men of their own condition to exercise the requisite degree of skill, foresight, or attention in performing the duties in which the injured man was engaged.

'It is the Company's experience that its safety regulations acquire a new significance. Wilful disregard of them is seen to be disastrous. The workpeople not only treat with greater respect existing regulations, but, for their own protection invent new ones. In short, they are brought by actual experience to understand that the neglect of one man may mean danger to all. This applies not only to workpeople; foremen and managers themselves, if vigilance or duty be relaxed, may become the subject of criticism by those whom they ordinarily control.

'As a result of these inquiries the accident rate among the Company's workpeople has, over a period of years, been very considerably reduced.'

'Throughout its 30 years' existence the scheme has commanded, and still enjoys, the complete confidence of the workpeople, management, and Directors of the Company. Contributions by workmen (including casual workmen) are at the rate of one penny per month. These contributions are entirely devoted to extra benefits (Rule XXIII) or to provide medical or surgical attendance and treatment when not available under the N.H.I. Acts.'

The principal Rules are as follows:

VI. The Fund to be administered by the Copartnership Committee, consisting of the President of the Company, 36 employees selected by ballot and 35 other members nominated by the Board of Directors.

#### *Company's Guarantee*

IX. The Company guarantees the financial stability of the Scheme and will contribute the necessary amount annually to make income balance expenditure, and further guarantees, in the event of the revocation or expiration of the Scheme, a due provision for discharging all existing liabilities.

#### *Benefits*

X. The benefits shall, on the whole, exceed those obtainable under the Act.

#### *Non-Fatal Accidents*

(a) Accidents incapacitating for not less than three days shall entitle Members to benefit at the following rates:—

MEN:

21 years of age and upwards . . . . £1. 10s. od. per week

<sup>1</sup> From 82 per 1,000 in 1898 to an average of 32 per 1,000 for the past seven years.

**WOMEN:**

|                                       |      |     |              |
|---------------------------------------|------|-----|--------------|
| 21 years of age and upwards . . . . . | £1.  | 5s. | 6d. per week |
| Part-time cleaners . . . . .          | 13s. | 6d. | "            |

**LADS AND GIRLS:**

|                                 |      |     |       |
|---------------------------------|------|-----|-------|
| Under 16 years . . . . .        | 13s. | 0d. | "     |
| 16 and under 18 years . . . . . | 18s. | 0d. | "     |
| 18 and under 21 years . . . . . | £1.  | 1s. | 6d. " |

Benefit shall commence as from the date of accident; payment to be continued until recovery, or until the doctor certifies that the Member is fit for work, or until it is proved to the satisfaction of the Committee that the incapacity is permanent. A Member on recovery from his incapacity shall resume his normal occupation, but if he is unable to do so through partial incapacity, he may if other suitable work is available be employed thereon at the wage applicable to such occupation, without prejudice to any weekly payment to which he would have been entitled in similar circumstances under the Act.

(b) Subject to the discretion of the Committee, no Member shall be entitled to the payment of the total incapacity allowance with respect to any previous accident incurred whilst actually at work in the Company's service, after resuming work for a period of six months.

(c) If it is proved that the injury to a Member is attributable to the serious or wilful misconduct of that Member, any compensation claim in respect of such injury shall, unless the injury results in death, or serious and permanent incapacity, be disallowed.

*Permanent Incapacity*

XI. In cases of permanent incapacity for work, the Committee shall decide what weekly allowance or lump sum shall be paid, which shall be not less than is payable under the Act.

*Fatal Accidents**XII. Funeral Allowances*

(a) In the case of a fatal accident, a funeral allowance of Twenty Pounds shall be paid to the widow or dependants. If no dependants, the reasonable expenses of medical attendance and burial, not exceeding Twenty Pounds, shall be paid from the Fund.

*Pensions to Widows*

(b) The widow of a deceased Member wholly dependent upon his earnings, shall be granted a pension of Fifteen Shillings per week until re-marriage. This amount shall be supplemented during the first three months by an extra payment of Five Shillings per week. In the event of re-marriage, a sum not exceeding Twenty Pounds shall be paid as a final grant from the Fund.

*Allowances for Children*

(c) Where a Member leaves a widow or other member of his family not being a child under the age of fifteen (or sixteen if a full-time scholar) wholly dependent upon his earnings, and, in addition, leaves one or more children under the age of

fifteen (or sixteen if a full-time scholar) so dependent, there shall be paid in respect of such until that age is attained:—

|   | s. | d.         |
|---|----|------------|
| While one such child . . . . .              | 7  | 0 per week |
| While two such children . . . . .           | 12 | 0     "    |
| While three or more such children . . . . . | 16 | 0     "    |

If the deceased Member was a widower, or widow, leaving a child, or children, wholly dependent upon the earnings of the deceased, the Committee shall decide what allowance, weekly or otherwise, shall be made, which shall be not less than the amount obtainable under the Act.

The Committee shall have power to make payment to the person for the time being in charge of such child or children, or, otherwise, in their discretion use or invest the money for the children's benefit.

#### *Partial Dependency*

(d) If any of the before mentioned relatives were only partially dependent upon the deceased Member's earnings, they shall be paid, in regard to the above stated allowances, a sum proportionate to their dependency as may be determined by the Committee.

#### *Dependants other than Widows or young Children*

(e) If the deceased Member leaves any member of family (as defined in the Act) other than widow or child under the age of fifteen, wholly or in part dependent upon the earnings of the deceased, the Committee shall determine what allowance, weekly or otherwise, shall be made, which shall be not less than the amount obtainable under the Act.

#### *Benefit—To whom paid in case of Death*

(f) No benefit shall be paid until legal proof has been supplied to the Committee that the claimant is the widow or child or dependant of the deceased.

#### *Accidents for which Third Parties are Liable*

XIII. When the injury for which benefit payable under these Rules was caused under circumstances creating a legal liability in some person or persons other than the Company to pay damages in respect thereof, the injured person or his dependants shall not be entitled to receive both damages and benefit.

#### *Three Days' Incapacity*

XIV. No claim shall be made on the Fund for less than three working days' incapacity.

#### *Notice of Accident*

XV. Any Member intending to claim on the Fund must give notice to the Engineer of the Station, or other person in authority, either verbally or in writing, within three days of the occurrence of the injury, or as soon as practicable thereafter. In case of failure to comply with this Regulation, the Secretary of the Fund

shall report the claim to the Committee, who shall decide as from what date the payment of benefit shall commence, or otherwise deal with the matter as they consider fair.

#### *Medical Examination*

XVI. The certificate of any qualified medical man that the claimant is unable to work by reason of some injury will, when accompanied by a claim, be accepted by the Committee. The claimant must, if required, either at the commencement, or at any time during the period of alleged incapacity, undergo examination by a medical officer appointed by the Company, on receipt of an order from the Secretary of the Fund. Anyone refusing to comply with such order, shall have the benefit stopped, pending the consideration of the case by the Committee. In cases of doubt, or uncertainty, a consultation with another doctor shall take place, but the decision of the Committee shall be final and conclusive.

#### *Behaviour while in receipt of Benefit*

XVII. Except in cases of permanent incapacity, a Member in receipt of benefit shall:—

(a) Be under qualified medical attention during the receipt of such benefit, and shall obey the instructions of the doctor in attendance.

(b) Not be absent from his place of residence for the time being between the hours of 7 p.m. and 8 a.m. from 1st October to 31st March, nor between the hours of 9 p.m. and 7 a.m. from 1st April to 30th September, without permission from the Secretary.

(c) Not be absent from home at any time without leaving word where he may be found.

(d) Not leave the locality where he resides without requesting the consent of the Committee, which consent shall not be unreasonably withheld.

(e) Not be guilty of conduct which is likely to retard his recovery and

(f) Not do any kind of work, domestic or otherwise, unless it be light work for which no remuneration is or would be ordinarily payable, or work undertaken primarily as a definite part of the Member's medical treatment.

If an injured member fails to return to work when able to do so, the further payment of benefit, either wholly or partially, shall be stopped, subject to appeal by the injured member to the Committee, whose decision shall be final and conclusive.

#### *Members leaving Home*

XVIII. Any Member desiring to leave home for change of air, &c., while in receipt of weekly benefit, must first notify the Secretary of the Fund, and, if so requested, produce a Medical Certificate that such change is necessary.

#### *Weekly Medical Certificate*

XIX. An injured Member in receipt of benefit must supply the authorised Officer at the Station not later than Wednesday morning of each week with a Medical Certificate of incapacity to work unless, owing to special circumstances, such member is exempted for a period from so doing.

*Extras*

XXIII. When the Committee consider that the interests of an injured Member will be thereby served, they shall have power to grant, out of moneys provided under Rule VIII, extras, such as a sum of money to enable that Member to go into the country, or to a Convalescent Home, or to obtain a surgical appliance, or to provide such other attention or assistance as the Doctor or the Committee may deem necessary. The Committee shall also have power to grant extra assistance to Widows or other dependants of a deceased Member in such cases as they may think fit.

Members shall not make any purchase or accept any treatment involving charges for which they rely on assistance under this rule before obtaining sanction from the Secretary.

*Juries of Workpeople*

XXIV. The system introduced in 1892 of an inquiry into accidents by a Jury of 12 Workpeople shall be continued in accordance with the following regulations:

(1) An inquiry shall be made within the first fortnight, if possible, into every accident that is a charge on the Fund.

(2) At the discretion of the Engineer, or other person in authority, an inquiry may be made into any accident that is not a charge on the Fund, or that results in loss of, or damage to, property only.

(3) That such inquiry be made by a Jury consisting of 12 Workpeople, presided over by the Engineer of the Station, or other person in authority, except in fatal cases, when the President, or one of the Directors of the Company, shall preside, and in these cases the inquiry shall be subsequent to the Coroner's Inquest.

(4) In order to secure a fair selection of members of a Jury, an alphabetical list shall be made in the month of May every year at each Station of all the Members who have been three years in the Company's service; and in selecting a Jury, the names shall be taken in the order in which they appear on the list. Every Jury shall include at least one Member (but not more than two) of the Copartnership Committee; a number of Workpeople (but not more than four) from the Department in which the injury occurred, and the remainder shall be taken in order from the Jury List, excepting any who may be required as witnesses. Any Member having served on a Jury shall not again serve thereon, except as a Member of the Copartnership Committee, until the whole of the names on the list have been called in their turn.

(5) The Jury and the Presiding Officer shall call witnesses and hear evidence and thoroughly investigate all the conditions and circumstances connected with the accident; the Jury shall then retire alone, to consider and endeavour to agree upon a verdict.

(6) To prevent a similar accident, the Jury shall endeavour, to the best of their ability, to arrive at the real cause of the accident, and when they have done so, shall state their honest convictions, not hesitating to say whether any blame attaches to any Official or worker, or whether the plant, machinery, or means of protection were defective, if they are satisfied that there has been any neglect or carelessness or defect.

(7) The Jury shall determine whether it was a pure accident, or who, or what, was the cause, or whether it was due to serious and wilful misconduct. These points, whenever there is any doubt, shall be decided by ballot, and by a two-thirds majority, the 12 members of the Jury alone voting, but either the injured Member, or the Engineer of the Station, or other person in authority, shall have a right of appeal to the President of the Company, whose decision shall be final.

(8) If, in the opinion of the Jury, anything can be done to prevent a similar accident in future, they shall make such recommendation as they may consider necessary.

(9) The inquiry shall take place in public, that is, in the presence of as many of the Workpeople as can conveniently attend without unduly interfering with their work, and, wherever practicable, the Jury shall first visit the spot where the accident happened.

(10) The verdict of the Jury shall be posted up in one or more conspicuous places about the works, and particulars, with a summary of the case and the proceedings thereon, with the verdict, and the names of the Jurymen, shall be recorded in a book kept at the Station for the purpose. A copy of this summary shall also be sent to the Secretary of the Company, to be laid before the Directors.

NOTE: The following questions are submitted as a guide to the Jury, to which they may add any remarks they may consider necessary:

#### QUESTIONS

1. Was the injury caused by accident arising in the course of the injured Member's employment?
2. Was the Accident caused by any defect in the plant or materials used, and if so, say what it was?
3. Was there any mistake in the manner in which the work was done, and if so, state it?
4. Was the Accident due to the negligence or want of care, or foresight of any Officer or Foreman, and if so, let the truth be known.
5. Was the Accident caused wholly or in part by any carelessness or negligence of the injured person, or by that of any fellow worker, and if so, let the truth be known.
6. Was the Accident attributable to the serious and wilful misconduct of the injured Member, or any other person?
7. Was it a pure Accident, for which no one was to blame?
8. Can anything be done to prevent a similar Accident?

NOTE: The prevention of Accidents is the chief object; therefore, to give honest and true answers is a duty, and it will do a kindness to all concerned, and will not penalize any one except on Question 6.

#### *Notice to Close Fund*

XXV. Six months' notice from the Company or Members shall terminate the existence of this Fund.

#### *Alteration of Rules*

XXVI. The Committee shall have power from time to time to alter, or rescind, or add, to these Rules, provided that notice of any such amendments shall

be posted at all the Works and depots of the Company for at least 14 days before their submission to the Registrar of Friendly Societies. If within that period a majority of the Members so request by notice in writing to the Secretary of the Fund, Meetings of Members shall be held for the consideration of the same. If at such Meetings the proposed amendments, or any modifications thereof, are approved by a two-thirds majority, they shall be adopted for incorporation in the Rules, but not otherwise.

Any proposed amendment of Rules shall be subject to the consent of the Registrar of Friendly Societies; but no alteration shall be made which would render the Scheme less favourable to the Members than the provisions of the Act.

#### *Disputes*

XXVII. Any question with regard to what is an accident, within the meaning of that term as used in these Rules, as to whether any person is, or was at any date, a Member of the Fund, as to who are dependants, as to which dependants are entitled to receive payment due from the Fund, and the amount or amounts of such payments, shall be determined finally by the Committee.

If any question (other than such as the Committee are hereby expressly empowered to decide) shall arise with respect to the Scheme, or the right to alter the amount or duration of benefits thereunder, or with respect to the construction or meaning of these Rules, or any variation or alteration thereof, such questions shall be settled by the Committee, whose decision shall be final and conclusive.

*The Shipyard Accident Fund Society* is one of two Funds established under a contracting-out scheme by an old-established and famous firm of shipbuilders whose name is withheld at their request.

Their other scheme, which follows identical lines, relates to their engine-shop.

Under the shipyard scheme the funds of the Society are derived from contributions of members, payments by the Company, and fines.

The Rules (1934) are as follows:

5. (a) *Contributions of Members*, payable in advance monthly, are as follows:

|   |                     |                |      |
|---|---------------------|----------------|------|
| 1st Class members, rated at 60s. per week and above | .                   | .              | 6d.  |
| 2nd      "  | 55s.                | and under 60s. | 5½d. |
| 3rd      "  | 50s.                | "              | 5d.  |
| 4th      "  | 45s.                | "              | 4½d. |
| 5th      "  | 40s.                | "              | 4d.  |
| 6th      "  | 35s.                | "              | 3½d. |
| 7th      "  | 30s.                | "              | 3d.  |
| 8th      "  | 25s.                | "              | 2½d. |
| 9th      "  | 21s.                | "              | 2d.  |
| 10th     "  | 18s.                | "              | 1½d. |
| 11th     "  | 15s.                | "              | 1d.  |
| 12th     "  | 12s.                | "              | ½d.  |
| 13th     "  | under 12s. per week | .              | ½d.  |

(b) Time-workers, and those who do not habitually work piece-work, shall be classed according to their time-rates. Members who habitually work on piece-rate shall be classed as is arranged between the various trades and the Company from time to time. Members are themselves responsible that they are classified correctly according to the above scale.

(c) The Company shall add to the sums so collected each month a sum equal to the gross amount. This fund shall be called Fund No. 1; it shall be treated as a special fund, shall be separately accounted for, and be reserved for cases dealt with under Rules 40 (g) and 44. The fines mentioned in Rule 4, Clause (3), shall be carried to the credit of this special fund.

(d) Should this fund be insufficient at any time to meet the benefits provided for in Rules 40 (g) and 44, it shall be within the power of the Managers to make a *pro rata* levy on all members of the Society, but only after having obtained sanction from the members in general meeting assembled and the concurrence of the Company. The Company shall contribute a sum equal to the gross amount of the levy.

(e) In the event of the balance at the credit of this fund being such as the experience of the Managers shows to be in excess of requirements, then, with the sanction of the Company, the contributions to this fund may be suspended for such time as the Managers advise as being possible, or alternatively, the number of weeks between the payment of subscriptions may be increased.

6. (a) The Company shall place to the credit of the general funds of the Society a lump sum at the rate of 2s. 6d. per lunar month for each member of the Accident Fund Society, this lump sum to be paid every fourth week from 1st July 1929, as shown by the pay and salary sheets, and certified by the Secretary of the Accident Fund Society. This fund shall be called Fund No. 2.

(b) Should this fund at any time be more or less than what is required to meet the benefits provided for in the Rules (other than those to which Fund No. 1 applies) the Managers may notify the Company to suspend their contribution for such time as they may deem advisable, when the contribution shall be suspended accordingly; or, in the other event, the Managers shall call upon the Company to increase their contribution until the fund is sufficient for the purpose of the Rules, when the Company shall be bound to provide the necessary increase.

(c) These funds so collected under Rules Nos. 5 and 6 shall be lodged in the hands of the Treasurer.

7. (a) The funds so established shall be used to solace or compensate members and their dependants for loss by reason of personal injury by accidents arising out of and in the course of employment by the Company.

(b) Every personal injury by accident to members will be admitted to the benefits of the fund irrespective of cause, subject to the conditions specified in the following rules.

8. (a) No workman shall be obliged to join the fund. On a workman entering the employment his attention shall be drawn to the Rules of the Society by his foreman. Copies of these Rules in large type shall be exhibited at convenient places throughout the yard.

(b) Unless a workman gives notice, in writing, of his objection to become a member of the Society to the Secretary, in his office, within three days, he shall be considered to have joined the Society as a member.

(c) In addition to the copies of the Rules, there shall be exhibited at the same places a summary in large type of the requirements of these Rules with regard to the giving of notice of accidents, the making of claims, and the procedure to be followed in the case of industrial diseases.

(d) Should such a workman enter the employment before the pay when the sums specified in Rule 5 are deducted, then from his first pay, and from subsequent levy pays, shall be deducted, according to class, the sum specified in that Rule. Should the workman join after that pay, then from his first pay shall be deducted the sum of one penny as an entrance fee to the Society, and from the next levy pay and from subsequent levy pays shall be deducted the sum, according to class, specified in Rule 5.

(e) If a workman does not join the Society as a member, no deduction shall be made from his first pay, nor from any subsequent pays, unless he, at a later date, expresses his desire to join, when he shall be treated as if he had just entered the yard.

(f) No man may join or leave the Society while suffering from the effects of an accident.

(g) Any member is at liberty to retire from the Society on giving two months' notice in writing, except as above mentioned.

9. On any workman leaving the employment of the Company while not suffering from the effect of an accident other than a disease within the meaning of Part II of the Workmen's Compensation Act 1925, or if so suffering, without giving due notice of the accident, all benefits to which he or his legal personal representatives would be entitled from the fund shall cease.

10. No claim for compensation will be entertained unless made in compliance with Rule 36.

11. The funds and all the business of the Society shall be administered by twenty-two Managers—exclusive of Secretary and Treasurer—eleven to be nominated by the Directors of the Company for the time being, hereafter referred to as the Directors, from amongst themselves and their officials, and eleven to be elected by the workmen members of the different departments from amongst themselves. The President to be a neutral man, to be nominated by the Company, and approved of by the members' representatives.

12. The Annual Meeting of the Society shall be held in February. The date and time of meeting shall be advertised by notice at both gates of the yard and at the store. At this meeting the Directors will intimate the names of their representatives, and the various departments will intimate in like manner the names of their representatives. Annual Report and Abstract Accounts, duly audited, for the previous year, shall be presented for adoption, and copies of the report shall be distributed to the Managers, and shall be exhibited at the two gates of the yard and at the store, seven days previous to the meeting.

13. The Managers elected at the Annual Meeting shall hold office for one year. In the event of a vacancy arising from any cause during the currency of the year, the section affected by the vacancy shall be called upon by the remaining Managers within 28 days from the date of the vacancy occurring, to elect another Manager to fill it.

14. All meetings of Managers shall be called by the Secretary fixing notices at the two gates and at the store of the ... . . . Shipyard, at least one day before that for which the meeting is called. Ordinary meetings will be held on the Wednesday after each monthly payment.

15. (a) The Managers shall elect their own Vice-President.

(b) The Company shall elect and pay the Secretary. The Cashier or Pay-Clerk in the Shipyard Department for the time being shall be Treasurer.

(c) The Secretary and Treasurer shall have no vote at meetings of Managers or Committees mentioned in these Rules.

16. The duties of the President shall be to take the chair when present at the annual meeting and at all meetings of Managers, or of Committees of Management. In his absence, the Vice-President shall take his place and have the same power. In the absence of both, the meeting shall elect a Chairman for the time being, who shall have all the rights and privileges of President or Vice-President. The President shall be a member of all Committees *ex officio*.

17. The duty of the Secretary shall be to take minutes of all meetings of Managers and Committee of Management, and to co-operate with the Visiting Committee in supervising those in receipt of aliment. He shall keep an accurate note of all those in receipt of aliment, and prepare returns required by the Secretary of State, by the Registrar of Friendly Societies, and by the Managers. He shall be Secretary to the Committee of Investigation, and shall take minutes of their proceedings and of evidence tendered in case of accidents, and generally take charge of the Society and its management, acting under the instructions of the Managers.

18. The duties of the Treasurer shall be to receive the funds collected from members, from fines, and from the Company; to keep proper accounts of his intromissions; to report the state of the funds at each monthly meeting of Managers; to pay aliment and grants as instructed by the Managers. All moneys received by the Treasurer shall be placed in the Dumbarton Branch of the Commercial Bank of Scotland in the names of the President, Treasurer, and one other appointed by the Managers, which three shall form a Finance Committee.

19. The Managers shall appoint three of their number quarterly to act in consort with the President and Secretary as a Committee of Management, who shall carry on the business of the Society between the monthly meetings, and report to same. The three members so appointed shall also constitute a Visiting Committee, whose duty it shall be to visit the injured who are unable to report themselves at the gate-house. It shall also be their duty to attend at the gate-house when those injured report themselves, as required by the Rules, and generally to supervise those in receipt of relief. They will be assisted in their duty by the Secretary, but the responsibility rests with them.

20. (a) The Managers shall appoint four of their number, who, along with the Vice-President and Secretary, shall form a Committee of Investigation.

(b) The duty of this Committee shall be to inquire into the cause and effect of all accidents. When an accident occurs, everything as far as possible is to be left untouched, and the Secretary, or, in his absence, a member of the Investigation Committee, is to be at once informed. This Committee will then proceed to investigate the case and to take evidence, if need be, from those who witnessed the accident. The Committee shall make a full report upon the accident, and may make such suggestion as they think fit for the prevention of similar accidents in the future.

21. A list of Managers, Committees, and officials for each year shall be posted at the two gates and at the store of the yard immediately after their appointment and election, and this shall remain posted at the gates and at the store till a new list is made to replace it.

22. The Managers shall have power during any current year to make bye-laws, or to alter the said bye-laws, as they may consider conducive to the best interests of the Society, subject to the following conditions:

- (1) That no such bye-law shall be in any sense an expansion or restriction of these rules, but only of an explanatory nature, and for carrying these Rules into effect.
- (2) That the whole body of such bye-laws shall be, on the occasion of each annual meeting, read over to the meeting and approved, altered, or disallowed by a show of hands, subject to Rule 68. Printed copies of the alterations shall be supplied to each member on demand at a price not exceeding 1s.

23. (a) All questions at the meetings of the Managers, or of the Committees of Management, shall be decided by vote.

(b) The President in both cases to have the casting vote. Seven to form a quorum at meetings of Managers.

24. At their first meeting after the establishment of this Society, or at a subsequent meeting, the Managers may order a cheque to be drawn for a sum of money to be kept in the hands of the Treasurer, which shall be used for the weekly payments in case of disablement. The Treasurer at each ordinary meeting of the Managers shall submit a statement showing the amount of money so expended since the previous meeting, when the Managers shall order a cheque to be drawn for the amount. All moneys received by the Treasurer must be paid into the bank on receipt of same.

25. So much of the funds of the Society as may not be wanted for immediate use, or to meet the usual accruing liabilities, shall, with the consent of the Managers, be invested by Trustees as the Managers may direct, but only in securities in which Trustees in Scotland are allowed to invest Trust Funds by Act of Parliament.

26. In the event of any such investment being made as prescribed in Rule 25, two Trustees shall be appointed, one by the Managers and one by the Company; and in the event of the death or withdrawal of either of the Trustees, a successor shall be appointed by the section affected, to whom such funds shall be transferred. The Trustees shall deal with the invested funds as directed by the Managers.

27. The accounts shall be audited by two auditors; one appointed by the Company and one by the members as a body. The auditors shall receive remuneration as decided upon by the Managers, charged *pro rata* to Funds Nos. 1 and 2.

28. Within two days of receiving a written requisition, signed by six of the Managers, or by not less than 50 ordinary members, or by the Company, the Secretary shall call a special general meeting of the members. The notice of meeting shall state the business for which the meeting is called, and no other business may be considered at that meeting, or at any adjournment of the same.

29. At least seven days' notice of the Annual Meeting or of Special General Meetings shall be given. Such meetings shall be called by notice fixed at the two gates of the yard and at the store, which notice shall specify the time and place and the business to be considered.

30. Every member shall, on demand, be supplied, free of charge, with one copy of these rules; for any additional copies members shall be charged 1s.

31. The books and the accounts of the Society shall be open to the inspection of any member at all reasonable hours, and the Secretary shall produce the same on a written order from the Managers.

32. This Society is liable to compensate for injuries received not only within the yard gates, but also to compensate workmen who are injured on board any vessel building by the Company, or of any vessel under repair by the Company, so long as the workman is employed by the Company.

33. (a) The Secretary shall keep a special book in which members may enter the names of any persons whom they nominate as their executor under this scheme in the event of death.

(b) Such entry must be in the handwriting of the nominator, and duly witnessed by the Secretary or other person. Such nomination shall hold good unless and until altered or cancelled by the nominator in this book.

34. A special register shall be kept by the Managers for the purpose of recording awards made under Rules Nos. 42, 43, and 44, and any variation of same made by the Managers, from time to time. These entries shall be made at the meeting at which the awards are made, and shall be signed by the President, Vice-President, and Secretary.

#### BENEFITS AND ALIMENT

35. Before any allowance can be granted for absence from work due to personal injury by accident, it must be proved that the accident

arose out of and in course of employment by the Company. But if, in the opinion of the Managers, the accident was caused by the injured member being under the influence of intoxicating liquor, by oiling or cleaning machinery while in motion, or by the serious and wilful misconduct of the member, the Managers may, except where Rule 52 otherwise provides, reduce the weekly allowance provided for in Rule 37. The injured person shall, however, have the right to appeal to the Directors.

36. (a) Any member injured by accident must in every case proceed either to the surgery in the General Store, and report the occurrence to the Secretary there, or, in the case of minor accidents, the member may make his report and receive attention at the nearest dressing station.

(b) At the surgery and at each of the dressing stations there shall be kept special books in which the particulars of accidents must be entered by the injured member himself, or, at his request, by the person in charge of the surgery or dressing station as the case may be.

(c) Unless such report be made immediately the accident occurs, or as soon as practicable thereafter, the injured member shall, at the discretion of the Managers, forfeit his benefits.

(d) No member may leave the yard as the result of an accident without the occurrence being reported to the Secretary, who shall be responsible for securing the attendance of the Doctor in case of necessity.

(e) No claim for benefit under this scheme will be entertained by the Managers if made later than six months from the date of the alleged accident.

(f) The member himself is responsible for the notification, but in the event of the accident being of such a nature that it is impossible for him to make notification, then the responsibility falls upon his dependants.

37. (a) Aliment will be given to members during absence from work due to personal injury by accident according to the following scale, namely:

| 1st class | . | . | . | 30s. | od.   | per week |
|-----------|---|---|---|------|-------|----------|
| 2nd       | " | . | . | 28s. | 9d.   | "        |
| 3rd       | " | . | . | 26s. | 3d.   | "        |
| 4th       | " | . | . | 24s. | 5d.   | "        |
| 5th       | " | . | . | 23s. | 2d.   | "        |
| 6th       | " | . | . | 21s. | 1 1d. | "        |
| 7th       | " | . | . | 20s. | 8d.   | "        |
| 8th       | " | . | . | 19s. | 5d.   | "        |
| 9th       | " | . | . | 17s. | 3d.   | "        |
| 10th      | " | . | . | 14s. | 8d.   | "        |
| 11th      | " | . | . | 12s. | 5d.   | "        |
| 12th      | " | . | . | 10s. | 2d.   | "        |
| 13th      | " | . | . | 8s.  | 0d.   | "        |

The week shall be reckoned as six working days, and for odd days, where necessary, one-sixth of these sums shall be taken.

(b) A member who has been in receipt of aliment for a period of not less than six months may require the Managers to review his case, with a view to increase of aliment, but no such case shall be held valid unless the member can show that his pay before the injury (as defined by his class at that time) was at least 20 per cent. less than he would be receiving were he uninjured at the date of review, and such shall be the only ground of review. If the member's claim be sustained, his aliment shall thereupon be raised to that corresponding to the higher class corresponding to his new rating under Rule 5.

(c) In the case of a member under 21 years of age, if the review takes place more than six months after the accident (and the application for the review is made before or within six months after the member attains the age of 21 years), the amount of the weekly payment shall be increased to correspond to that for the class for which he is eligible at review. In this case the 20 per cent. limit does not apply.

38. Members injured and off work for 3 working days or less will not be paid aliment, but if off work for 4 working days, or more, aliment will be paid for each day off work. The day of accident will only count as one day if the accident takes place before noon.

39. (a) Lump-sum compensation for fatal accidents shall be paid according to the following scale where the deceased member leaves a widow or other member of his family wholly dependent on his earnings:

|  |      |
|--|------|
| 1st Class to 5th Class inclusive . . . . . | £300 |
| 6th Class . . . . .                        | £295 |
| 7th " . . . . .                            | £265 |
| 8th " . . . . .                            | £230 |
| 9th " and below . . . . .                  | £200 |

(b) Should death not immediately follow the accident, any aliment which may have been paid on account of the accident shall form a part of the compensation, and be deducted from the lump sum finally awarded, provided that the sum paid shall not be reduced below £200.

(c) Should the deceased member leave no such dependants, or only dependants partially dependent upon his earnings, the compensation shall be such a sum, not exceeding the above sums, according to the class of the deceased, as the Managers may decide.

(d) Should the deceased member leave no dependants, the reasonable expense of his medical attendance and burial, not exceeding £20, shall be paid.

(e) Should the deceased member leave a widow or other member of his family (not being a child under the age of 15) wholly dependent upon his earnings, and, in addition, leave one or more children under the age of 15 so dependent, there

shall, in respect of each such child, be added to, and dealt with as part of, the compensation payable under (a), a sum of 15 per cent. of the amount arrived at by multiplying the weekly earnings of the workman, or where such earnings are less than one pound then by multiplying one pound, or where such earnings exceed two pounds then by multiplying two pounds, by the number of weeks in the period between the death of the member and the date when the child will attain the age of 15, fractions of a week being counted as a week. No deduction from the share of the compensation due to the children may be made on account of aliments paid to deceased members.

(f) If the widow or other member of the deceased member's family or such child or children as above in (e), or any of them were partially dependent on the deceased member's earnings, there shall be paid as part of the compensation under (a), (b), or (c) such proportion of the sum which would have been payable under (e), if all such persons had been wholly dependent as may, taking into consideration the amount payable under (a), (b), or (c), be decided by the Managers to be reasonable.

(g) The total amount of compensation payable to the dependants shall in no case exceed £600.

40. (a) Where the deceased member is an apprentice or boy, under 21 years of age, unmarried, and without children and living with his parents, whose father is in employment, then the scale of death compensation shall be as follows:

|  |   |   |   |   |      |
|--|---|---|---|---|------|
| Earning 30s. od. or more per week          | . | . | . | . | £200 |
| " 27s. 6d. and less than 30s. od. per week | . | . | . | . | £190 |
| " 25s. od.   "   " 27s. 6d.   "   "        | . | . | . | . | £165 |
| " 22s. 6d.   "   " 25s. od.   "   "        | . | . | . | . | £145 |
| " 20s. od.   "   " 22s. 6d.   "   "        | . | . | . | . | £125 |
| " 17s. 6d.   "   " 20s. od.   "   "        | . | . | . | . | £105 |
| " 15s. od.   "   " 17s. 6d.   "   "        | . | . | . | . | £90  |
| " 12s. 6d.   "   " 15s. od.   "   "        | . | . | . | . | £75  |
| " 10s. od.   "   " 12s. 6d.   "   "        | . | . | . | . | £60  |
| " less than 10s. per week                  | . | . | . | . | £45  |

(b) When the father is either dead or unable to work, but the mother is living, the compensation shall be such a sum, not exceeding that provided for in rule 39, according to class, as the Managers shall decide.

(c) Grandparents, the parents being dead, take the place of parents.

(d) Should the apprentice or boy under 21 years of age be an orphan living with a guardian, the compensation to be paid to the guardian shall be such a sum as the Managers may decide, not exceeding the above scale.

(e) Should the apprentice or boy under 21 years of age be living in lodgings, but have dependants living outside the ..... to whose

support he is in the habit of contributing, compensation shall be such a sum, not exceeding those in the above scale according to the earnings of the deceased member, as the Managers may decide.

(f) For the purpose of this scheme an illegitimate child shall be considered legitimate.

(g) Should the deceased member be over 21 years of age, but under 25, without dependants, and living with his parents, whose father is in employment, the Managers shall have power to inquire into the case, and, if found advisable, make a grant from No. 1 Fund in accordance with the above scale, the administration of the said grant to be entirely in the hands of the Managers.

41. (a) In every case of fatal injury to a member, and on the production of a copy of the death register, a sum of £15 shall be paid to cover preliminary expenses, which sum shall be considered as part of the death compensation, and shall be deducted from the sum ultimately paid.

(b) Where the deceased member has left a widow, or a widow and children, wholly dependent on him, then, and until the Managers finally settle the amount of compensation, there shall be paid weekly to the widow a sum not exceeding the aliment the deceased would have been entitled to while totally disabled—these sums to be a part of the death compensation. Where the deceased member does not leave any such dependants, but leaves dependants in part depending upon his earnings at the time of his death, such a sum, not exceeding the above mentioned, shall be paid as may be considered equitable by the Managers.

(c) The Managers shall fix the final compensation within two months of the death of the injured man.

(d) In the case of any member being killed in the employment, the Company on its part agrees to give preference in employment to the widow and children of the deceased so long as, in the opinion of the Company, their conduct is satisfactory, and, in the case of children, until they attain the age of 21 years.

42. (a) In the case of accidents which may totally disable a member for life, the payment of aliment according to the scale in Rule 37 shall continue until the doctor is able to certify definitely that the disablement will be permanent. When the doctor is in a position so to certify, the Managers shall thereupon assess the damage, and shall pay to the injured member the compensation provided for in the scale below, but not before a confirmatory report has been obtained from one of the Surgical Referees provided for in Rule 54.

(b) Lump sums can only be awarded on the formal request, in

writing, from the member, but the Managers are not bound to accede to this request.

(c) Any alment which may have been made on account of the accident shall form a part of the compensation, and shall be deducted from the lump sum if such be finally awarded.

(d) When an award is made under this rule, and a pension is decided upon, the Managers shall pay this weekly out of Fund No. 2, and hand over to the Trustees for special investment a sum sufficient to purchase an annuity of like amount from the National Debt Commissioners, or if there be investments available already in the hands of the Trustees, the Managers may, by minute in the special register referred to in Rule 34, earmark any portion of these investments for this purpose, and thereupon these investments so earmarked shall no longer be available for the ordinary purposes of Fund No. 2.

The Committee of Management shall prepare, at intervals of not more than five years, a statement giving full particulars of all pensions in force. The trustees shall prepare a statement, to accompany the above statement, certifying the amount of earmarked securities in their hands at that date. These statements shall be submitted to an Actuary who shall certify whether or not the total sum earmarked for pensions in the hands of the trustees is sufficient to purchase annuities for the pensioners equivalent to their pensions.

In the event of the Actuary certifying that the sums so earmarked are not sufficient, they shall be increased by a sum equal to the amount of the deficit, such sum to be transferred from Fund No. 2.

In the event of the Actuary certifying that the sums so earmarked are sufficient, the surplus (if any) shall be transferred to Fund No. 2.

| <i>Class</i> | <i>Pension per week</i> | <i>Lump-sum compensation</i> |
|--------------|-------------------------|------------------------------|
| First        | 22s. 6d.                | £840                         |
| Second       | 21s. 7d.                | £805                         |
| Third        | 19s. 8d.                | £735                         |
| Fourth       | 18s. 4d.                | £680                         |
| Fifth        | 17s. 5d.                | £650                         |
| Sixth        | 16s. 5d.                | £610                         |
| Seventh      | 15s. 6d.                | £580                         |
| Eighth       | 14s. 7d.                | £545                         |
| Ninth        | 13s. 0d.                | £485                         |
| Tenth        | 11s. 0d.                | £410                         |

(e) Total disablement shall be the loss of both hands, both eyes, or both legs at or above the knee; also combination of a leg at or above the knee and a hand or an eye, or a hand and eye; but in these latter four cases, should the member express a wish to remain in the employment, and the Company be able and willing

to provide him with suitable employment, he may do so; his compensation in that case shall not exceed a maximum of three-fourths total disablement.

(f) Other accidents not enumerated above, which may, in the judgment of the Managers (after they have received and considered reports as provided for in this rule), totally disable a member for life, shall also be dealt with in accordance with the above scale.

(g) Should the member be an apprentice and under 21 years of age, then he shall be awarded compensation on the following system: The class he would have belonged to on the immediate completion of his apprenticeship, if he had been working on 'time' at his trade, shall first be ascertained. The difference between the compensation in that Class and Class 10 shall then be divided by sixty, and for each whole month from the commencement of his apprenticeship till the date of award one-sixtieth shall be added to the compensation specified in Class 10, but not more than sixty sixtieths.

(h) Members who are not apprentices, but who are under 21 years of age, shall have their cases specially and individually considered by the Managers, who, in assessing the compensation payable, shall keep in view the method of dealing with apprentices as above, also the weekly sum the member would probably be earning when working on 'time' on attaining the age of 21, had he remained uninjured.

43. (a) In the case of accidents which may partially disable a member for life, and are not provided for in Rule 44, the payment of aliments, according to the scale in Rule 37, shall continue, until the doctor is able to certify definitely as to the extent of the injury, and that the member is then fit to return to work.

(b) Two months after the member has resumed work, the Managers shall assess the damage, and shall pay to the injured member compensation not exceeding one-half that provided for in Rule 42.

(c) The Company agrees to find such work for the injured member who elects to remain in its employment as, in its opinion, he is able to perform, at the usual rate of wages paid for such work, and to continue him in that employment so long as, in its opinion, his behaviour is satisfactory, but it is understood that this undertaking will not apply during strikes, lock-out, or when there is a scarcity of work in the department in which he is employed.

(d) The dismissal or suspension of such a man shall be at the discretion of the Directors alone.

(e) Any aliment which may have been paid on account of the accident shall form a part of the compensation, and be deducted from the lump sum if such be finally awarded.

(f) Lump sums can only be awarded on a formal request, in writing, from the member, but the Managers are not bound to accede to this request.

(g) When an award is made under this rule and a pension is decided upon, the Managers may pay this weekly out of Fund No. 2, and make investments with the Trustees to purchase an annuity in the same way as provided for in Rule 42.

(h) Partial disablement shall mean the loss of a leg at or above the knee, or the loss of an arm at or above the wrist.

(i) Members suffering from other accidents not enumerated above, which may, in the judgement of the Managers (after they have received and considered reports as provided for in this rule), partially disable a member for life, shall be awarded such sums as the Managers may decide, according to the gravity of the injury, but not exceeding the maximum in this rule.

(j) Should the member be under 21 years of age he will be awarded compensation in a similar manner to that specified in Rule 42.

44. (a) In the case of accidents which lead to the loss of minor parts of the body, such as fingers, toes, feet, ears, eyes, &c., and which do not come under Rule 42 or 43, the Managers shall, within two months of the member's returning to work, assess the loss and pay solatium to the injured person according to the extent of the injury, but not exceeding the sum of £300.

(b) Members receiving solatium under this rule shall, if they remain in the employment of the Company after the accident, be entitled, other things being equal, to preferential employment, provided their conduct is satisfactory.

(c) Any alment which may have been paid on account of the accident shall be deducted from the lump sum finally awarded in full when the sum is £200 or over. When the sum is less than £200, then from that sum shall be deducted such proportion of the alment as the sum awarded, less £50, bears to £150. When the sum is £50 or less no deduction shall be made.

(d) Payments under this rule shall, less the sums deducted for alment already paid in accordance with the above system, come out of No. 1 Fund.

45. During the two months' probation under Rules 43 and 44 the weekly payments of compensation shall not be made. In the event of a pension being granted under Rule 43, it shall date from the commencement of the two months.

46. The Managers may for their own guidance prepare a scale of compensation and solatium within the limits laid down in Rules 43 and 44, scheduling the various accidents which have occurred or are likely to occur, and specifying pensions and lump-sum composition for Rule 43 and lump-sum solatium for Rule 44—such scales to be submitted to the members and the Company through their delegates when made or when altered for their approval.

47. Should a member who has received solatium or compensation for the permanent effects of an accident be again injured by a non-fatal accident in such a manner that further solatium or compensation is due, the gross effect of the two or more injuries shall be the basis on which the solatium or compensation is assessed, as if the whole of the injury had occurred at one time, and from the sum fixed shall be deducted the sum or sums paid for previous injuries.

48. In the case where the Managers consider it desirable, under special circumstances, to substitute for the lump sum of death com-

pensation a weekly payment, they shall be at liberty to make such arrangements whereby the amount awarded is paid in weekly instalments.

49. Where such weekly payment is being made to the widow or adult defendant, the Managers may, upon evidence of misconduct on the part of the defendant, suspend such payments for such time as the misconduct endures, and, should there be children in benefit, they may make such arrangements for their care as seem to them necessary.

50. Where a weekly payment is payable under this scheme to a person under any legal disability, the Managers may make such payments to the proper authorities on receiving satisfactory evidence that payment is due to such an authority. A weekly payment or pension shall not otherwise be capable of being assigned, charged, or attached, and shall not pass to any other person.

51. Men who are subject to fits must intimate the same privately to the Company, in writing, otherwise they are liable to forfeit all benefits of this scheme.

52. (a) If any member shall cause or contribute to his own injury by oiling or cleaning machinery while in motion, by wilful disobedience or opposition to the authority of any one duly authorized to exercise authority over him, or by his own negligence or wilfulness, such member shall only receive as disablement allowance one-half scale allowance of Rule 37, for a period not exceeding 26 weeks, when all payment shall cease; but if a member shall sustain fatal injury, or serious and permanent disablement, in consequence of his own act, as aforesaid, the claim of his representatives to the full compensation shall still remain good, as also his own claim under Rules 37 and 42.

(b) Any member dealt with under this rule by the Managers has the right of appeal to the Directors, whose decision shall be final.

53. The yard doctor selected and paid by the Company is to give free attendance to all accidents to members under 16 years of age until recovery. In the case of members over that age, one free attendance to be given; after that attendances to be at the member's charge—the doctor only to be required to attend to cases within the limits of the town.

54. (a) The certificate of any qualified medical man that a member is unable to work by reason of some personal injury as the result of an accident (see Rule 35) may be accepted by the Managers; but if the Managers are dissatisfied with any medical certificate the member must undergo an examination by one of the Surgeons, provided for in Rule 56, on receipt of an order from the Secretary naming the Surgeon, whose report will be final.

(b) Any one refusing to comply with such order shall have his allowance stopped until such examination is made, when his case will be reconsidered by the Managers.

55. Where, under this scheme, the right of compensation is suspended, no compensation shall be payable in respect of the period of suspension.

56. Surgical referees shall be nominated by the Company from time to time to the number of not less than three. These must be selected from surgeons who have served or are serving on the Staffs of the ....., ....., or ..... Infirmarys—the Managers to pay their fees as may be arranged out of Funds No. 1 or No. 2, according to the circumstances of the case.

57. (a) The Visiting Committee appointed to serve for three months shall, unless otherwise instructed by the Managers, in special cases, make a weekly visit to every case of disablement on the Fund, either at the house of the injured person, or when he reports himself at the gate-house.

(b) Men who are able to do so must attend weekly on a specified night for the purpose of being seen by the Visiting Committee and receiving their lines.

(c) The Visiting Committee shall have a book of tickets, with counterfoils; on their weekly visit to each case of disablement, and if satisfied, they shall give to the member then receiving aliment from the funds a ticket for his pay for the week next ensuing, the following being the form of ticket:

..... SHIPYARD ACCIDENT FUND SOCIETY

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To the Treasurer.

Please pay ..... the sum of ..... shillings, being the ..... week's allowance for disablement by accident.

} Visiting Committee

Countersigned:

Secretary

(d) Such ticket must then be taken by the member himself, or by a duly authorized person, to the Secretary, who shall countersign it, and enter the amount in his records, and afterwards, on being presented to the Treasurer, as provided for in Rule 61, the sum named shall be at once paid.

(e) In their duty the Visiting Committee will be assisted by the Secretary, but the responsibility rests with the Visiting Committee.

(f) The Visiting Committee may demand a doctor's certificate to be produced, and may refuse to certify for aliment unless such certificate is produced.

58. Every member in receipt of weekly allowance must be under qualified medical attendance during the whole of the time he is receiving such allowance; and if his medical attendant, or a member of the Visiting Committee, or any Manager, shall report to the Secretary neglect of ordinary precautions—such as late hours and exposure, use of intoxicants against doctor's orders, or if the injured person does anything to retard his recovery, or fails to go to work when able to

do so—the Managers shall have power to stop the further payment of allowance, either wholly or partially, subject to appeal by the injured member to the Directors.

59. (a) Any member receiving aliment who may desire to leave home for change of air, &c., must inform the Managers of his desire to do so, and they shall then cause him to be examined by the yard doctor, who will decide whether such change is desirable or not.

(b) In giving permission the Managers may impose such conditions as they may see necessary for the protection of the funds.

60. All materials for first dressings shall be provided by the Accident Fund. In the case of members under 16 years of age, materials for subsequent dressings shall also be provided by the Accident Fund until recovery.

61. The Treasurer will pay aliment to members each Monday. A medical certificate, when required by the Visiting Committee, must be sent to the Secretary on the Saturday previous, and aliment will be paid up to that date.

62. In case of fatal accidents no allowance will be paid until after clear legal proof has been supplied to the Managers that the applicant is the legal representative of the deceased member.

63. Members failing to report themselves at the gate-house on resuming work after being hurt forfeit any aliment that may still be due to them.

64. The names of those who are in receipt of aliment shall be posted at each gate and at the store.

65. All grants of money in case of death or permanent, total, or partial incapacity, or solatium to members shall, in every case, be awarded by the Managers.

66. Should the representatives of any member who has been fatally injured be dissatisfied with the decision of the Managers as to the application of the death compensation, they may appeal to the arbitration of the Directors, whose decision shall be final and binding on both parties.

67. Any question as to who is the defendant, or as to the proportion of the compensation payable to each defendant, shall, in default of agreement between the Managers and the defendants, be settled by the arbitration of the Directors.

68. These rules shall not be modified in any way, except by mutual agreement between the Company and the members, and no alteration shall be made which affects matters certified by the Registrar under Section 31, Clause 1, of the Workmen's Compensation Act, 1925. Modification shall be forthwith notified to the Registrar.

69. Should any difference of opinion arise between the Society and any of its members, or between the Company and the Society or any of its members, as to the intent, scope, and effect of these Rules or to the implement thereof, the same shall be decided by an Arbitrator mutually agreed upon, or, failing agreement, by an Arbitrator to be named by the Sheriff-Substitute of .....

70. (a) On the revocation or expiration of the certificate the funds in hand, if any, shall be used in the first instance to liquidate the liabilities at that date existing: if, after these liabilities are liquidated, there still remains any surplus

in No. 1 Fund, this surplus shall be disposed of as may be mutually arranged between the members and the Company: or, in the event of disagreement, as may be decided by the Registrar of Friendly Societies.

(b) Any deficiency in the funds shall be provided by the Company. Any surplus in No. 2 Fund, after all liabilities are met, shall belong to the Company.

The following additional provision shall be made so as to secure the discharge of liabilities arising out of the scheme in the event of the bankruptcy or liquidation of the Company.

(c) As soon as the Rules become operative, a certificate shall be furnished by Messrs. ...., .... & Co., Chartered Accountants, setting forth the sum which would be required fully to liquidate the claims of all those likely to be in receipt of aliment at the time of the bankruptcy or liquidation. The Company shall hand over to the Trustees of the Society as a special fund the above amount in Trustee securities. The interest accruing shall be paid to the Company.

(d) In the event of bankruptcy or liquidation all the funds of the Society, including the above special fund, shall be administered under the direction of a Trustee appointed by the Registrar of Friendly Societies. The surplus, if any, remaining after meeting all claims on the Society, shall be the property of, and be paid over to, the liquidator of the Company or his successors, except that any surplus in Fund No. 1 shall be dealt with as provided for in Rule 70 (a).

(e) In the event of the revocation or expiration of the certificate, and when the provisions of 70 (a) and (b) have been fulfilled, the balance of the special fund (see (c) above), if any, shall be re-transferred to the Company by the Trustees of the Society.

Compared with the foregoing scheme that of the *Woolwich Borough Council* is of little interest or value.

This scheme is for permanent workmen only and excludes salaried staff. The scale of compensation is that of the Act of 1925. The workmen pay no contribution at all. The only item in the scheme which is more favourable to workmen than the Act itself is the provision that 'permanent workmen are entitled to an amount representing the difference between the compensation prescribed by the Act and four weeks' full pay a year while absent in consequence of injury through the nature of the work, or a longer period at the discretion of the Council'.

The Council insures its temporary workmen with an Insurance Company and up to Sept. 30th 1936 they received payments prescribed under the Workmen's Compensation Acts, but the Council on Sept. 30th 1936 decided that temporary employees over the age of 21 years should receive payment of the difference between the amount received from the Insurance Company as compensation and the benefits prescribed for permanent employees in accordance

with the Council's scheme, such employees to have completed twelve months' continuous service with the Council.

The contracting-out scheme of the *Bootle Corporation* dates from 1937 and applies only to members of the Corporation Fire Brigade. It is regarded by the Corporation as more satisfactory to all parties than the Act. There is no provision for any contribution by employees. It takes the form of an Employers' Indemnity Policy issued to the Municipality by a commercial firm against the legal liability of the Corporation towards members of the Bootle Fire Brigade. The terms of the Policy preclude the Corporation from making, without the consent of the Insurance Company, any admission of liability, arrangement, settlement, or payment in respect of any matter covered by the Policy, the Insurance Company having, always at its own cost, the absolute conduct and control of all negotiations, proceedings, or actions in connexion with any claim, for which purpose the Insurance Company is entitled to use the name of the Corporation, including the bringing, defending, enforcing, or settling of legal proceedings for the benefit of the Insurance Company.

Thirty-four officers and members of the Fire Brigade are insured thereunder at an annual cost of £188.

No up-to-date figures are available showing the number of establishments in factory and non-factory trades, or of Public Utility Services employing 1,000 persons or more. The latest are those of 1930.<sup>1</sup> At that time 535 firms in the factory trades with 1,000 employees or more employed between them 1,143,000 persons. 452 firms in the non-factory trades (including mines and quarries and building and contraction) employed 1,134,000 persons. To these must be added 783,000 persons employed in Public Utility Services and Government Departments. Of these perhaps 100,000 were covered by Treasury Schemes as government employees, leaving 683,000 persons employed by Public Utility Services covered by the Census of Production. Thus large groups of employees numbering 1,000 or more embrace about 3 million persons. For all these contracting-out schemes might have great advantages.

We are not at liberty to disclose the cost of compensating workmen for injuries incurred by firms whose contracting-out schemes we have summarized. It is perhaps sufficient to say that it is very substantially less than the average cost of insurance premiums, owing largely to a lower accident experience which, again, is ascribable to the close association of the men themselves with the schemes. This in turn is

<sup>1</sup> The Final Report on the Fourth Census of Production of the United Kingdom (1930), Part V, General Report.

an effective means of preventing dissatisfaction and feelings of injustice in particular cases.

These schemes, copies of which may be seen at the office of the Chief Registrar of Friendly Societies, have attracted no public interest and have hitherto received no attention. The sole responsibility of the Chief Registrar is to certify that they are financially sound, and not less favourable to the workmen than the Act itself, and that they conform thereto in other respects. Other aspects, viz. the administrative structure of the schemes, their practical working and advantages, as compared with the bare provisions of the Act are beyond his competence. Hence perhaps the recommendation of the Holman Gregory Committee (pp. 63-4) that his duties in this regard should be transferred to the proposed Workmen's Compensation Commissioner. Had such an appointment been created we cannot doubt that the merits of contracting-out schemes would have received far more careful consideration, and publicity, than they have enjoyed and, probably, a far wider extension. Apart altogether from this question, however, we feel that the whole system of contracting out, on the lines we have been at pains to set forth in this Appendix, deserves full consideration at the hands of all firms employing, say, over 500 persons.

## APPENDIX II

### *A Critical Synopsis of Workmen's Compensation Statistics*

THE paucity of statistical information relating to matters dealt with in the Workmen's Compensation Acts and to their working contrasts sharply with the full information relative to the working of the Factory Acts obtained and published by the Factories Department of the Home Office, and goes far to explain why Workmen's Compensation is backward as compared with other branches of British social legislation.

It was one of the defects of the Act of 1923 that it did not provide for a far more complete collection of returns from all employers of labour to whom the Act applied. The returns at present rendered differ in no respect from those required by § 12 of the Act of 1906, which was re-enacted as § 42 of the Act of 1925. The specific regulations now in force under § 42 (2) are dated Oct. 17th, 1913.<sup>1</sup> The form of the Home Office annual report has scarcely changed since 1923: we really know no more now than we did then.<sup>2</sup>

We do not know, for example, to how many 'workmen' the Act applies, for insurance is neither compulsory, nor under effective state supervision. The Holman-Gregory Report put the figure at 15 millions: the International Labour Office put it in 1935 at 17 millions:<sup>3</sup> it is unlikely to have diminished since then. In France, on the other hand, official returns give the number of persons covered by Workmen's Compensation (1933) as 10,309,507: in Germany, for the same year, 25,055,161.

The figures presented by the Home Office in its Annual Report are not the only, though they are the principal, source of information as to the working of the Acts. The contents of the volume are described in the covering letter, which precedes it, as

1. Statistics as to compensation paid in respect of accidents and scheduled diseases during the year under the Workmen's Compensation Acts, in the seven great groups of industries in which returns are called for from employers under section 42 of the Act of 1925, viz.: mines, quarries, railways, factories, docks, constructional work, and shipping. These groups embrace a large proportion of the chief industries, but do not by any means cover the whole field. Besides the various commercial, clerical, and domestic and professional employments, e.g. nurses, to which the Act applies there are several important industries not covered by the returns, for example, building, road transport, and agriculture.
2. General statistics for the year in regard to the administration of the Workmen's Compensation Act, including compensation paid under the Silicosis and Asbestosis schemes, together with particulars, relating to the Employers' Liability Act, 1880.

<sup>1</sup> Willis, *loc. cit.*, p. 500.

<sup>2</sup> Cf. Cohen, *loc. cit.*, p. 19.

<sup>3</sup> *I.L.O. International Survey*, Geneva, 1936, p. 358.

The above seven industrial groups covered in 1936 7,606,066 persons, a figure which must be contrasted with the 15-17 millions which come under the scope of the Acts. Workmen's Compensation statistics therefore cannot be said to cover even 50 per cent. of the persons coming within the scope of the legislation.

But even these statistics cannot be accepted without reservation as to the sources whence compensation is provided. Compensation payments for 1932 and 1936 were: Fatal, £575,303 and £661,592; Non-fatal, £5,053,475 and £5,786,345 respectively. But these figures are incomplete in respect of the total accidents or injuries even in those seven groups, for they relate only to those subject to claims for compensation and, as no compensation is payable unless disability lasts more than three days, the figures do not include minor accidents. Including these minor accidents—which, however, are not the concern of our essay—the total number of industrial accidents involving personal injury in Great Britain is estimated at about 15,000,000 per annum.<sup>1</sup>

Of the total amount of compensation paid in the seven industries in 1936, 48.3 per cent. was paid by the Mutual Indemnity Associations in the capacity of insurers; 20.4 per cent. was paid by Insurance Companies, and 31.3 per cent. was paid by employers—either directly or through the agency of Mutual Indemnity Associations—in respect of liabilities covered by insurance. Here, however, an error must be avoided. Whilst the great majority of the Mutual Indemnity Associations, as the Home Office Report explains, undertake to cover all classes of risks under the Acts, some have hitherto indemnified their members against a part only of the liabilities. For example, several important associations while indemnifying their members against the whole of the risks in fatal cases have not shouldered the liability in disablement cases except after the first six months. In these cases the liability of the first six months has been met by payments either by the member himself or, less frequently, on his behalf by the Association acting not as insurers but as agents, the cost of the compensation being recovered from the member. The significance of the above percentage figures is therefore obscure and is not clarified by the presentation of another table<sup>2</sup> which distinguishes the percentage paid by or on behalf of Employers belonging to Mutual Associations, by Employers insured with Companies and by Uninsured Persons who do not belong to either of these categories. In both cases, however, the percentage figure for companies is a little over 20 per cent. and the application of this figure to the political issues of Workmen's Compensation is of some importance. Thus the Under-Secretary of State for Home Affairs recently declared that it was not the case that insurance companies are the big factor in workmen's compensation. 'The actual figures with regard to the seven big industries which make returns to the Home Office show that 20 per cent. of the total is comprised of insurance companies, 61 per cent. of mutual indemnity associations of a non-profit-making character, and 19 per cent. of employers who insure their own risks.'<sup>3</sup>

It is always dangerous to draw general conclusions from the total average of group figures without regard to the differentiation of the individual group figures. If the above percentage ratio 62 : 20 were the result of an even or fairly even

<sup>1</sup> Dr. Donald C. Norris, *Brit. Ency. of Medical Practice*, vol. vii, 1938, pp. 119-20.

<sup>2</sup> *Workmen's Compensation Statistics for 1936*, p. 5.

<sup>3</sup> *Debates H.C.*, Nov. 19th, 1937.

distribution of mutual associations and insurance companies over the whole field of those seven industries, the deduction drawn by the spokesman of the Home Office might have been legitimate. But the official Report notes that 'the practice in regard to insurance differs widely in different industries'. Taking the official figures and summarizing those for 'Factories' the result is:

*Percentage of Compensation Paid by or on behalf of*

|                     | <i>Employers belonging<br/>to Mutual Indem-<br/>nity Associations</i> | <i>Employers insured<br/>with Insurance<br/>Companies</i> | <i>Uninsured<br/>Employers<sup>1</sup></i> |
|---------------------|---|---|--|
|                     | %   | %   | %  |
| Shipping            | 84.6  | 2.1   | 13.3                                       |
| Factories           | 47.8  | 43.4  | 8.8  |
| Railways            | 0.0   | 0.2   | 99.8                                       |
| Docks               | 45.8  | 18.8  | 35.4                                       |
| Mines               | 81.8  | 4.2   | 14.0                                       |
| Quarries            | 35.4  | 53.2  | 11.4                                       |
| Constructional Work | 26.0  | 48.1  | 25.9                                       |

We deduce from these figures that the 60 : 20 ratio is greatly influenced by the figures in Shipping and Mines. Both represent groups in which special conditions prevail in this matter. As regards Mining, which is of outstanding importance, the predominant part played by Mutual Associations may be explained by the early growth of associative organizations among employers as well as among employees. Conditions in the mining industry and in factory industries cannot well be compared. The importance, however, of this group emerges from total compensation paid; viz.

|                     | 1932              | 1936              |
|---------------------|-------------------|-------------------|
|                     | £                 | £                 |
| Shipping            | 196,578           | 259,614           |
| Factories           | 1,861,430         | 2,426,546         |
| Docks               | 233,415           | 280,556           |
| Mines               | 2,785,219         | 2,927,190         |
| Quarries            | 91,973            | 112,986           |
| Constructional Work | 194,867           | 171,149           |
| Railways            | 265,296           | 269,896           |
| Total               | <u>£5,628,778</u> | <u>£6,447,937</u> |

The figures show the increasing proportion of compensation payments attributable to factories, in which are employed 5,839,699 of the 7,606,066 persons coming within the provision of the Acts. As the percentage of insurance companies

<sup>1</sup> viz. employers not belonging to either of the two preceding categories, including employers with a 'Compensation Trust' under the Workmen's Compensation (Coal Mines) Act, 1934, some employers insured only to a limited extent, and some employers insured with one of the few Mutual Indemnity Associations or Insurance Companies which did not send collective returns to the Home Office.

nearly reaches that of mutual associations it is misleading to say that only 20 per cent. of the business of Workmen's Compensation is done by insurance companies.

Whatever be the merits of Mutual Associations, as compared with Insurance Companies—a matter which we shall consider at length in a subsequent volume—it is clear that the statistical position requires careful examination by the Royal Commission, which might with advantage consider why mutual associations predominate in some, and companies in other, groups of industries. In cotton factories, for instance, mutuals predominate up to a percentage of 82·0, while in the wool, &c., industry and in 'other textiles' the companies prevail up to 59·4 and even 70·0 per cent.

The amount of compensation paid during 1936 per person employed in each of the seven groups of industries was as follows:

|                              | s. d. |
|------------------------------|-------|
| Shipping                     | 34 0  |
| Mines                        | 76 5  |
| Quarries                     | 31 7  |
| Factories                    | 8 4   |
| Docks                        | 57 0  |
| Constructional Work          | 14 9  |
| Railways                     | 12 1  |
| Average for the seven groups | 16 7  |

But the figures giving the incidence of Workmen's Compensation payments on the industries lack uniformity. For coal-mining the figure is given per ton of coal raised (3d. in 1936). For railways it is given as 0·9d. in the £ of wages. As regards shipping the figure relates per ton of shipping; it was 4·3d. per ton (4·4d. per ton of shipping 'not laid up'). A uniform system seems desirable.

The total burden upon all industries and employments under the Acts of Workmen's Compensation is a matter of conjecture. The Home Office suggests a figure for the seven groups of industries in 1936 as £8,000,000; for all industries and employments it may be something under £12,000,000.

An interesting and elaborate table of the Home Office Report deals with the 'Duration of Compensation', a feature which bristles with difficulties. We give here a combined and condensed synopsis of the figures for 1936:

*Cases terminated in which compensation had lasted  
(exclusive of cases terminated by payment of a lump sum)*

|                     | <i>Total</i> | <i>Less than 2 weeks</i> | <i>2 weeks and less than 3</i> | <i>3 weeks and less than 4</i> | <i>4 weeks and less than 13</i> | <i>13 weeks and less than 26</i> | <i>26 weeks and over</i> |
|---------------------|--------------|--------------------------|--------------------------------|--------------------------------|---------------------------------|----------------------------------|--------------------------|
| <b>A. Accidents</b> |              |                          |                                |                                |                                 |                                  |                          |
| Number .            | 365,353      | 156,048                  | 60,810                         | 26,414                         | 102,833                         | 13,299                           | 5,949                    |
| Percentage .        |              | 42·71                    | 16·64                          | 7·23                           | 28·15                           | 3·64                             | 1·63                     |
| <b>B. Diseases</b>  |              |                          |                                |                                |                                 |                                  |                          |
| Number .            | 10,394       | 2,703                    | 1,532                          | 680                            | 3,619                           | 617                              | 1,243                    |
| Percentage .        |              | 26·00                    | 14·74                          | 6·54                           | 34·82                           | 5·94                             | 11·96                    |

The tables show a certain regularity in so far as the bulk of accident and disease disablement is fortunately of relatively short duration; but no explanation is offered

for the large figures for injuries lasting for 4 weeks and less than 13 weeks. Cases of disease are of considerably longer duration than of accidents.

Cases terminated by payment of a lump sum are expressly excluded. The Report draws attention to the fact that such cases are 'usually' those in which disablement is prolonged, so that, if such cases were included, the proportion of disablement cases of longer duration would be higher than that indicated by the figures in the last two columns. In the face of this statement it is somewhat surprising that the Home Office Report declares elsewhere that of the 382,980 cases terminated in 1936 4.15 per cent. were settled by the payment of a lump sum after weekly payments and 0.45 per cent. by payment of a lump sum without previous weekly payments,<sup>1</sup> the remainder 365,353 cases or 95.40 per cent. being settled without a lump-sum payment.

This statement might create a misleading idea as to the importance of lump-sum settlements by giving the impression that the role of the much criticized lump-sum settlement is negligible. The reverse is the case. But as lump-sum payments mainly relate to cases of long duration, while the overwhelming proportion of accidents is one of relatively short duration, it is not appropriate to compare them as a percentage of the total number of cases; one has to compare the number of cases settled by lump-sum payments with those subject to weekly payments, as they relate to categories of injuries of a longer duration, in which the problem of lump-sum settlements either by agreement or by compulsory redemption generally arises.

The position becomes quite clear when we refer to the following figures:

#### PAYMENTS IN LUMP SUMS IN 1936

| <i>A. Cases of Accident</i>                                   | <i>No.</i> | <i>Amount £</i> |
|---|------------|-----------------|
| Without previous weekly payments . . . . .                    | 1,712      | 89,482          |
| Less than 26 weeks (after previous weekly payments) . . . . . | 8,784      | 244,310         |
| 26 weeks and over " "   | 7,131      | 1,485,907       |
| Total   | 17,627     | 1,819,699       |

  

| <i>B. Cases of Industrial Disease</i>                         | <i>No.</i> | <i>Amount £</i> |
|---|------------|-----------------|
| Without weekly payments . . . . .                             | 72         | 4,295           |
| Less than 26 weeks (after previous weekly payments) . . . . . | 868        | 32,201          |
| 26 weeks and over " "   | 1,577      | 204,076         |
| Total   | 2,517      | 240,572         |

The figures are conclusive. The weight of lump-sum payments, if considered in their numbers or by the amounts paid, lies in the category of cases of long duration, i.e. in the cases of 26 weeks and over. If we compare those cases the result is (for 1936):

|   |       |
|---|-------|
| Cases of Accident exclusive of cases terminated by payment of lump sum . . . . .            | 5,949 |
| Payments in lump sums . . . . .   | 7,131 |
| Cases of Industrial Diseases exclusive of cases terminated by payment of lump sum . . . . . | 1,243 |
| Payments in lump sums . . . . .   | 1,577 |

<sup>1</sup> Cf. our observations on composition agreements at p. 248.

The predominance of lump-sum payments here becomes evident. It should not be obscured by the percentage figures as computed in the official Report quoted above. In matters so differentiated as those covered by Workmen's Compensation percentage comparisons may be liable to serious objections.

This observation also applies to the percentage figure which is given with respect to the frequency of claims. The Report states that while it is not possible to give the precise percentage of claims subject to litigation during 1936, it must have been quite small, 'certainly less than 2 per cent.' In the mining industry it is said that the number of applications for arbitration was just under 1 per cent. of the number of cases compensated. We cannot accept such a comparison. Litigation must be rare in regard to cases under four weeks' duration if only on grounds of the legal expenses involved. Such cases in respect of accidents and exclusive cases terminated by payment of lump sums were not less than approximately 240,000 out of 365,000. Statistics of litigation should be related, if at all, to the more serious cases. Litigation is mainly a matter of what one might call 'single' cases. If they were to be brought into relation to those cases which lasted 26 weeks and over—that is about 6,000 cases—the percentage figure would be quite different, and would negative the suggestion that litigation was of small importance. Future statistics should indicate the number of applications for arbitration and the duration of such cases grouped according to the heads of the statistics dealing with the duration of the compensation paid.

The analysis of industrial diseases is full and adequate. The principal diseases are:

|   |           | 1936        |
|---|-----------|-------------|
|   | Old cases | New cases   |
| Miner's nystagmus   | . . . . . | 6,202 1,522 |
| Beat hand   | . . . . . | 120 1,397   |
| Beat knee   | . . . . . | 324 4,624   |
| Beat elbow  | . . . . . | 59 652      |
| Inflammation of the synovial lining of the wrist joint and tendon sheaths | . . . . . | 36 516      |
| Dermatitis  | . . . . . | 705 2,642   |
| Lead poisoning  | . . . . . | 129 98      |

Miner's nystagmus remains of outstanding importance. Cases of this disease accounted for 39.9 per cent. of the total number. Some interesting statistics relating to it are to be found in the Stewart Report.<sup>1</sup> Of the number of cases terminated during 1936 the figures are:

|  |           | 1933 | 1936  |
|--|-----------|------|-------|
| A. Settled by the payment of lump sums:  |           |      |       |
| 1. Without previous weekly payment   | . . . . . | 6    | 16    |
| 2. After previous weekly payments lasting less than 26 weeks                             | . . . . . | 36   | 181   |
| 3. After previous weekly payments lasting 26 weeks and over                              | . . . . . | 571  | 1,118 |
| B. Not settled by the payment of lump sums but terminated after weekly payments lasting: |           |      |       |
| 1. Less than 4 weeks   | . . . . . | 34   | 10    |
| 2. 4 weeks and less than 13  | . . . . . | 42   | 56    |
| 3. 13 weeks and less than 26   | . . . . . | 88   | 95    |
| 4. 26 weeks and over   | . . . . . | 967  | 821   |

<sup>1</sup> Loc. cit., pp. 44-8.

These figures show clearly the necessity of taking into account the differentiation in the duration period. In contrast with general accident figures (see p. 310) the bulk of the cases, in this regard, is to be found with those of *long duration*. This being so the number of lump-sum settlements outweighs in general, and particularly as the duration increases, the cases of weekly payments.

In making comparisons with former years it is generally difficult to have proper regard to the effects of the changes in law which may make accidents or injuries appear to have increased, while in fact only the range of those coming under the scope of new regulations has been widened.<sup>1</sup>

The figures relating to the financial aspect of Workmen's Compensation are not less incomplete than those we have already criticized. They are of particular importance if the general economic and the national side of this whole matter is to be taken into account apart from the social one, i.e. the effect upon the conditions of the injured people or their dependants. Reading between the lines of the annual statistics it is clear that the Home Office is well aware of the incompleteness of the material officially available. We are told of the actual amount paid to workmen or their dependants (in the seven groups), but the total charge on the industries in respect of compensation is nowhere stated. To compute the total charge it would, as the annual Report explains, be necessary to take account of the administrative expenses and medical and legal costs of employers, insurance companies, and mutual associations, the amounts placed in reserve, and the profits earned by the insurance companies. Apart from this, we may add, there should be figures giving the number of lost days, although this is perhaps a matter for the Ministry of Mines and the Factories Department. In the case of insurance companies the above-mentioned items must have constituted a large proportion of the total charge, and the lack of information is much to be regretted. For example, it appears from the returns furnished to the Board of Trade that the income of the companies from premiums for the year 1936 in connexion with employers' liability insurance in Great Britain and Northern Ireland, after making the necessary adjustments in respect of unexpired risks, was £5,508,753. Of this sum £3,506,936, or 63·66 per cent., was expended in payment of compensation or damages, including legal and medical expenses incurred in connexion with the settlement of claims. Of the balance £185,070, or 33·31 per cent., was spent in payments for commission—9·01 per cent., and expenses of management—24·30 per cent., leaving £166,747, or 3·03 per cent., for profits. But these figures are subject to important reservations: they apply to all industries and not merely to the seven groups of industries scheduled under the Act. They take no account of one item of profit, viz. interest and dividends on reserves, on which full information is lacking. A full description and analysis of the present system of workmen's compensation in Germany will be given in a subsequent volume.

The following figures for Germany, compared with those given for Britain, give a foretaste of the importance which attaches to such hitherto neglected comparisons. They cannot, however, easily be related to our own. The cost of administration, for instance, includes considerable expenditure on safety-first propaganda and educational activities in connexion with accident prevention. But it should be

<sup>1</sup> Cf. *Report of the Chief Inspector of Factories for 1932*, p. 8.

noted that the percentage of the costs of administration is only about 10 per cent. of the income levied from employers, while with English insurance companies 24.30 per cent. goes in expenses of management and an additional 9.01 per cent. is spent in payments for commission, while within the arrangement of the Home Office with the Accident Association the loss ratio, i.e. the proportion which the total amount paid or set aside in respect of claims bears to the premiums, was 60.34 per cent. in 1936. This would mean that of the *RM.* 261,500,000 of income by contributions at least a rough sum of *RM.* 156,000,000 would have been spent in claims in England, while in Germany the actual expenditure with *RM.* 207,500,000 in benefits was considerably higher.

### *Workmen's Compensation in Germany, 1936<sup>1</sup>*

**(Industrial Mutual Indemnity Associations)**

|  |   | <i>Million RM.</i> |
|--|---|--------------------|
| Contributions of affiliated undertakings ( <i>Umlagesoll</i> ) | . | 261.5              |
| Total expenditure  | . | 254.2              |
| Benefits (cash, medical, and rehabilitation)                   | . | 207.5              |
| Cost of Administration   | . | 26.9               |

We conclude these statistical observations with an extract from *Civil Judicial Statistics, 1936*, Table XXI:

*Proceedings under the Workmen's Compensation and Employers' Liability Acts and Investments*

## PROCEEDINGS UNDER WORKMEN'S COMPENSATION ACT

| <i>Memoranda Registered:</i>   | <i>Number<br/>in 1936</i> |
|--|---------------------------|
| 1. Lump-sum agreements without previous weekly payments . . . . .                              | 3,238                     |
| 2. Agreements for weekly payments . . . . .  | 1,160                     |
| 3. Agreements for redemption of weekly payments . . . . .                                      | 14,877                    |
| 4. Other agreements (i.e. termination, diminution, increase of weekly payments, &c.) . . . . . | 1,540                     |
| <b>Total</b>   | <b>20,815</b>             |

### *Applications for Arbitration:*

### Decided in favour of applicants:

<sup>1</sup> From the official organ of the German Mutual Indemnity Associations, *Die Berufsgenossenschaft* of Mar. 1st 1938.

## PROCEEDINGS UNDER EMPLOYERS' LIABILITY ACT

## Judgement for:

|                       |   |   |   |   |   |   |   |   |   |   |   |    |
|-----------------------|---|---|---|---|---|---|---|---|---|---|---|----|
| (a) Plaintiffs        | . | . | . | . | . | . | . | . | . | . | . | 8  |
| (b) Defendants        | . | . | . | . | . | . | . | . | . | . | . | 5  |
| Otherwise disposed of | . | . | . | . | . | . | . | . | . | . | . | 30 |
|                       |   |   |   |   |   |   |   |   |   |   |   |    |
| Total actions brought |   |   |   |   |   |   |   |   |   |   |   | 43 |

Table III shows that appeals to the Court of Appeal from county courts in respect of cases under the Workmen's Compensation Acts during 1936 numbered 70: appeals disposed of numbered 20.

Investments existing at end of year<sup>1</sup> under:

|  |   |   |   |   |   |   |   |   |        |
|--|---|---|---|---|---|---|---|---|--------|
| Workmen's Compensation Act   | . | . | . | . | . | . | . | . | 23,234 |
| County Court Rules (Order IX, Rule 24)   | . | . | . | . | . | . | . | . | 3,454  |
| County Court Equitable Jurisdiction  | . | . | . | . | . | . | . | . | 877    |
| Supreme Court of Judicature (Consolidation) Act, 1925 (Sec. 205) (on transfer from High Court) | . | . | . | . | . | . | . | . | 9,367  |

<sup>1</sup> The total balance of Invested Funds was £5,717,351 at the end of 1936.

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